



IRMI[®] Update

Risk Management & Insurance Commentary, Tips, and Tactics

25 RISK-CONQUERING IDEAS

By the Readers of IRMI Update

IRMI Update is a twice monthly e-mail newsletter for risk management, insurance and legal professionals. We launched *IRMI Update* on July 12, 2000, and have published more than 375 issues since then. Much has transpired in the world since that first issue, and *IRMI Update* has attempted to chronicle and comment on the risk management implications of many of these important events.

The readership of *IRMI Update* has grown to exceed 44,000 people and comprises some of the most knowledgeable, experienced, and respected risk professionals in the business. Issues either feature a risk management tip submitted by one of these readers or analysis of a new important coverage decision.

This special report presents 25 tips selected from past issues. These particular tips were chosen because they are generally applicable to most any organization. Each provides one or

more practical suggestions for controlling risks or reducing premiums. Those new to risk management and insurance will gain many pearls of new wisdom in these pages, and even the most seasoned practitioner will benefit from some of these ideas.

IRMI Update is absolutely free of charge. See a list of all [IRMI products](#) and subscribe today. Your newsletter will yield new practical tips regularly—bite-sized morsels of actionable tactics you can use to keep current and show you where to find more detailed information in our reference library.

[Figure 1](#) lists the 25 tips presented in this special report. For ease of use, we have linked directly to each tip from the figure. We sincerely hope that these ideas help you to improve the risk management and insurance program for your company or your clients.

Figure 1 25 Terrific Risk Tips

1. [You've Got E-Mail—Don't Let It Get You](#)
2. [Implement Drug Testing and Background Screening](#)
3. [Incorporate MVRs into Your Risk Management Program](#)
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1 You've Got E-Mail—Don't Let It Get You

E-mails routinely are included in “documents” requested during the litigation discovery process, because smoking-gun messages often are found. To protect your organization:

- ✓ Have a formal policy on e-mail use, and have employees acknowledge in writing that they will follow it. Include the right to monitor employee e-mail. Main rule: Never send an e-mail you wouldn't want a jury to see.
- ✓ Substantive e-mails to and from your attorney aren't subject to discovery. Subject lines should include something like “Privileged and confidential: attorney-client communication.” In the text, ask for the attorney's guidance.
- ✓ Sometimes it's best to communicate by picking up the phone or walking to the other person's office and having a conversation.
- ✓ In e-mails, don't exaggerate, speculate, insult anyone, use vague terms such as “substandard” or “troublesome,” or use legally loaded terms such as “negligent” unless you are sure the term is appropriate. Keep in mind that “keyword” tracking software is used to find smoking gun e-mails.
- ✓ Include e-mail in your document retention policy. Archive systems can allow you to find the files you need without wading through all the others. Be wary of using every archival technology available, however. Metadata—data about data—can be valuable to an opposing counsel.
- ✓ At the first hint of legal action, place a hold on any documents that might be relevant, and don't allow them to be destroyed, regardless of your retention policy.
- ✓ Remember, “deleted” items still reside on a server with a “not used” status, and can be retrieved until they're overwritten.
- ✓ “Blogging” risks can include defamation, libel, invasion of privacy, infringement of intellectual property, and securities laws violations. Insurance is available to address these exposures, which typically fall outside the “advertising injury” protection of a commercial general liability policy. If you include blogging standards in your e-mail policy, reference your existing company policies regarding non-disclosure of confidential information, discriminatory conduct, etc.

*By: William Henry
The CIMA Companies, Inc.
From [IRMI Update 145](#)*

2

Implement Drug Testing and Background Screening

In today's fast-paced environment, sometimes it is easy to overlook the seriousness of the effect of drugs and alcohol in the workplace. With the inconvenience of having to send people to a lab, along with the lost time and production, sometimes it's easier to just let them keep working. This kind of thinking could cause the downfall of companies—large and small. Businesses failing to drug test and do background screenings of their employees are open to serious legal costs and customer service risks. Consider the following:

Drug testing:

- ✓ Over \$100 billion annually is the cost to U.S. employers for on-the-job drug abuse.
- ✓ 85 percent of drug abusers steal from their workplaces.
- ✓ 65 percent of all work-related accidents are the direct result of substance abuse.
- ✓ 77 percent of all drug users over the age of 18 are employed.

Background Screening:

- ✓ 30 percent of business failures are due to poor hiring practices.
- ✓ An estimated 1 of every 20 working age adults (4.1 percent) will serve time in a prison during his or her lifetime.

- ✓ 53 percent of job applicants provide false information.
- ✓ On average in U.S. businesses, at least half of all new hires do not work out.

Drug testing and background screening should be up-front in a risk management program. Think about it. It's a simple decision that will make a major impact on your business.

By: Daniel G. Getzinger

National Association of Drug Free Workplaces

From [IRMI Update 98](#)

Receive Risk Tips in Your In-Box

Each issue of *IRMI Update* includes a risk tip like the ones included here to help you be a better and more informed insurance and risk management practitioner. The newsletter is absolutely free and signing up will not result in increased spam or unwanted advertisements. We will not provide your e-mail address to another company. (Read our [Privacy Policy](#).) Check out [archived IRMI Update](#) issues going back to 2000 for examples of what *IRMI Update* has to offer and read [testimonials](#) from loyal subscribers.

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3 Incorporate MVRs into Your Risk Management Program

If an employee was in an accident while on company business and caused bodily injury to someone else, do you think the lawsuit would be worse if your driver had multiple traffic violations on his record as opposed to none or, perhaps, one? Believe it or not, it might not matter, depending on how proactive you were before allowing that person behind the wheel.

Time is money, so it's easy to want to get a person behind a wheel and on the road to start making profit. Before doing so, however, you are well advised to proactively manage the risk by exercising due diligence in who you put there. A lot of businesses rely on their auto insurer to let them know if a driver is acceptable or not. Don't rely on the insurer; rather, set up your own guidelines of acceptability. I've seen insurance companies be too stringent, almost handcuffing the business. I've also seen them be too lax. If you put your own standards and processes in place, and they are effective, you enhance your negotiating power later on with insurers, and this can prove valuable.

For example, an idea that has been proven effective for us was to have employees who regularly drive on company business order

their own motor vehicle records (MVRs) from the state every 6 months and give it to their managers to review and reimburse. It forces the employee to take an active role and consciously think about it—kind of like a report card. As in any risk management endeavor, employee activity works better than passivity. Below are a few other things to consider:

- ✓ Have the employee sign an MVR consent form.
- ✓ Make the MVR a condition of employment, and check it before hire.
- ✓ Have a process to check MVRs however often you want them run.
- ✓ Set your standards for acceptability.

Because the auto exposure presents the greatest potential for catastrophic loss for a majority of businesses, this effort can pay large dividends.

*By: Marty Orlowski
The McNish Group, Inc.
From [IRMI Update 153](#)*

4 Keep Track of Insurance Policies

To business and insurance professionals, it is obvious that keeping records of coverage is essential. But many don't realize this risk-management imperative. Purging decades-old occurrence-based liability policies with other ancient business records is tantamount to burning cash. If an old claim crops up, or a statutory limitations period is lifted, solid evidence of coverage is the ace-in-the-hole because the insured bears the burden of proving coverage. Insurers are not required to maintain the records, and they don't! Neither do agents after 7 years. Be sure that old policies don't slip into the shredder, especially during an office move or change in management, company name changes, and acquisitions and mergers. Remind management and clients that former insurers are on the hook for covered claims, even if a business no longer operates under its old (insured) name. With space and budget limitations, small business and nonprofits are particularly at risk for losing track of old policies. Develop a checklist of the insurance

coverage essentials that must be retained, including:

- ✓ Images of policies, endorsements, and renewals;
- ✓ Documents showing applicable policy periods, limits, and coverages;
- ✓ Names of insurers;
- ✓ Descriptions of insured property and insureds; and
- ✓ Names of individuals who purchased coverage for the company.

With today's options for electronic storage, there are no excuses for failing to retain this invaluable information!

By: Stephanie K. Bitterman

Insurance & Construction Law, Masion LLP

From [IRMI Update 344](#)

5 Don't Forget Post-Injury Management Training

The concept is so fundamental that we many times forget to even consider how important it is to train management, supervisors, and staff on proper post-injury management. However, it is the single most important and cost-effective technique that can be done to manage claims, return the injured worker to his or her pre-injury condition, and reduce the overall cost of claims. Proper and timely responses to incidents can make certain that the injured workers get the appropriate care as well as the information needed to allow them to rehabilitate and recover from their injuries.

The training should include an emphasis on immediately reporting the claim to the insurer or third-party administrator. This allows the adjuster and other ancillary resources to be most effective in getting the injured worker comfortable with an unfamiliar process of

making a claim, the follow-up care needed, and—if lost time is involved—the required payment of indemnity wages. This will usually reassure injured workers that they are being treated fairly, improve morale for injured workers and their coworkers, and reduce the anxiety that might drive injured workers to attorney when they are not needed.

If you do not believe that you are qualified or capable of providing this training, most insurers, brokers, and consultants have some form of training for post-injury management. Review a few of the options and make modification suggestions to best fit your organization's needs.

By: Randy McKnight
Belz Enterprises
 From [IRMI Update 142](#)

Practical Risk Management

Since 1974, *Practical Risk Management—The Handbook for Risk and Financial Professionals* has been one of the world's most widely used risk management references. This two-volume reference manual covers all aspects of risk management including:

- Administrative Activities
- Risk Finance & Self-Insurance
- Loss Control/Claims Management
- Legal & Political Aspects
- Property Risks & Insurance
- Liability Risks & Insurance
- Risk Manager's Resources

Updated quarterly, *Practical Risk Management* is an indispensable source of practical, concise, action-oriented background and advice on all of the most important activities, techniques, and tools of risk management. If you can have only one risk management guide in your library, this is the one to purchase.

Learn more about [Practical Risk Management](#) on IRMI.com.

6 Sanitize Your Website To Avoid Underwriter Fears

Underwriters routinely visit the websites of their customers and prospects to get a better handle on their operations and the risks they present. Of course, most websites are maintained by corporate marketing departments with no concept of how an underwriter might perceive the information displayed there. Sometimes the unfortunate result is a terrified underwriter along with higher insurance costs (or no insurance at all).

For example, I ran into this recently when a contractor's website had photos of condominiums and a power plant despite the fact the firm does no residential construction and didn't routinely work in power plants. The underwriter considered not providing a quote

until we explained that someone in the marketing department put these photos on the Web site because they were "cool shots," not because they had anything to do with the contractor's normal operations.

To avoid unnecessarily complicating your renewal process by steering the underwriter in the wrong direction, carefully review your firm's (or your client's) website with an underwriter's eye. Then eliminate or change anything that might raise a red flag. This will be time and effort well spent.

*By: Steven D. Davis
McGriff, Seibels & Williams
From [IRMI Update 54](#)*

Get Your Tip Published in *IRMI Update*

All the tips in this special report were submitted by subscribers to *IRMI Update* and previously published in the newsletter. Provide us your tip on buying insurance, managing claims, or filling gaps in insurance coverages, and put yourself and your company in front of more than 43,000 risk professionals from around the world.

Risk Tips must be short (only a paragraph or two—150–300 words), original, practical, and not promotional. To qualify, your tip should not be specific to a particular industry. Your name, title, firm, and city/state will be shown. If you'd like, your e-mail or phone number can be shown so readers can contact you directly, and a live link to your website can be provided in the IRMI.com version of *IRMI Update*. Your contact information will not be published elsewhere or shared with anyone else. Learn more or [submit a Risk Tip](#).

7 Don't Be Afraid of E-Commerce—Be Prepared

While a number of risks arise from conducting business via the Internet, the bigger risk is not getting into e-commerce. With the appropriate planning, organizations can make the most of this opportunity and minimize their exposure by undertaking a thorough review of the organization's e-commerce business model to identify and address the potential risks. The following plan of action is recommended:

- ✓ **Review e-commerce applications.** Look carefully at all the ways the company uses the Internet and related technologies, especially applications involving e-commerce or business-to-business integration. Consider what would happen if one of these systems were temporarily shut down or penetrated by a hacker.
- ✓ **Set priorities.** Focus on e-commerce risks that could have the greatest impact on profits or reputation.
- ✓ **Gauge the company's vulnerability.** Conduct an audit of security policies and procedures. One method is to conduct "ethical hacking" by retaining a consultant to attempt to break into your network to identify its vulnerabilities.
- ✓ **Assess values affected.** Examine the financial impact and valuation issues associated with e-commerce activities. For

example, a denial of service attack will affect earnings associated with online retail operations in a matter of minutes.

- ✓ **Review insurance.** Does the existing insurance program cover e-commerce risks?
- ✓ **Examine contracts with vendors.** To what degree are liability risks transferred to outside vendors who provide critical functions such as Web hosting and Web development and maintenance?
- ✓ **Use a team approach.** Establish a team in the organization to evaluate e-commerce risks and develop strategies to deal with them. The team should include risk management, internal audit, legal, information technology, and marketing.
- ✓ **Establish e-commerce security procedures.** Set up due diligence procedures for systems security and business continuity, and test these methodologies. If a company cannot build the infrastructure to support security, it should consider outsourcing it.

*By: Randall Mohammed, ARM
Telecommunications Services of Trinidad
and Tobago
From [IRMI Update 23](#)*

8 Set Up a Fraudulent Claims Prevention Program

Insurance fraud is endemic in the United States and takes somewhere between \$80 billion to \$300 billion every year from the industry. Avoiding, or reducing, the flow of cash due to fraud requires the following from insurers.

1. An effective, well-trained and funded Special Investigation Unit (SIU).
2. A claims staff that is honored for detecting potential fraud and referring it to the SIU for further investigation.

To maintain an effective SIU the following steps must be taken by the insurer:

- ✓ Employ sufficient SIU staff to investigate no less than 3 percent of your claims since insurance fraud is involved in 3 to 10 percent of all claims.
- ✓ Train your SIU personnel to read and understand insurance policies issued by the insurer.
- ✓ Train your SIU personnel on the elements of the crime of insurance fraud and what is necessary to cause a prosecution to begin.

- ✓ Train your SIU personnel on the information needed to use fraud as a defense to a civil suit.
- ✓ Train your SIU personnel to be effective insurance investigators and interviewers.

To keep your SIU busy, it is imperative that every insurer train every claims person to recognize potential insurance fraud. To do so, it is necessary that they learn to recognize the “red flags” or indicators of insurance fraud. It is also imperative that the claims personnel recognize that red flags are not evidence sufficient to accuse someone of fraud but only enough to cause the insurer to thoroughly investigate the claim to determine if there is evidence to establish fraud.

If you are a risk manager or insurance buyer, you would be wise to ask your insurer about its process for identifying and dealing with fraudulent claims. If there is no process similar to this one, your loss experience is probably being adversely affected.

By: Barry Zalma, Esq., CFE
Barry Zalma, Inc.
From [IRMI Update 70](#)

9 Implement Enterprise Risk Management Concepts

Many companies are considering enterprise risk management concepts but are quickly overwhelmed with the range of issues they need to consider. Here are a few simple ideas to get things started.

- ✓ If you are a public company, begin by asking the person or group that identifies risks for SEC reports to also identify the top three corrective actions for the next quarter. Update the list quarterly.
- ✓ Ask your insurance brokers for a list of exposures. Your broker should be able to provide you with information about insurable risks and uninsured or non-insurable risks.
- ✓ Hold a meeting with representatives from Human Resources, Legal, Operations, Finance, and Sales to identify overlapping areas of responsibility and gaps. Typical examples include contract review, credit management, information technology, employee safety, and

acquisitions. Develop processes for managing overlaps.

- ✓ If your company has formal quarterly or annual objectives, ask each employee to identify the risks that could block implementation and to include risk mitigation strategies.
- ✓ Coordinate the development of a business continuity plan with an enterprise risk management review. In both cases, you need to focus on the areas of greatest potential loss.

Many formal approaches can be used to categorize, prioritize, and implement risks, but one of the fundamental requirements is cross-departmental communication. The above measures will help to establish a foundation for future action.

By: John Schaefer

ABD Insurance and Financial Services

From [IRMI Update 64](#)

10

Assess and Manage Your Intellectual Property Risks

With the growing recognition of the importance of intellectual property, it is imperative that organizations fully exploit their patents, copyrights, and trademarks while at the same time minimizing or insuring the risks that accompany such actions. The following plan of action is recommended:

- ✓ Review and catalog all intellectual property, looking carefully at the ways the company uses it and related technologies. Consider what would happen if the intellectual property rights were invalidated.
- ✓ Review current operations with a view toward discovering any exposure that might result in business interruption, loss of royalty payments, or a need for any redesign, remediation, and reparation that may occur or be required if your firm is found to be infringing on another's intellectual property.
- ✓ Focus on those areas of greatest vulnerability, and then conduct an audit of intellectual property defense and enforcement policies and procedures.
- ✓ Assess the viability of these policies and procedures and the associated need for insurance in the areas of infringement abatement, infringement defense, and loss of intellectual property value.
- ✓ Review available insurance and determine which programs cover the above-identified risks.
- ✓ Use the team approach, joining the risk manager, director of research, chief patent counsel, and group or division leader to make decisions in this area.

By: Robert W. Fletcher
Intellectual Property Insurance Services Corp.
From [IRMI Update 30](#)

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11 Value Contract over Comradery To Manage Risks

Design professionals are plagued with the unenviable task of negotiating often onerous contract terms with clients that promise a healthy stream of work. As their lawyer, I work with these professionals to get the best deal possible without losing the contract, focusing primarily on insurability issues. While a professional's contract with its client is an important risk management tool, also fundamental are its contracts with subconsultants. Because design professionals often feel a certain comradery with their design industry colleagues, they sometimes collaborate on not much more than a handshake. But when push comes to

shove (read: lawsuit!), the contract is king. The prime consultant on a project takes on coordination responsibilities, which means additional risk. By having a well-negotiated contract with its subconsultants, the prime consultant will be in a much better position at the time of a claim because the risk is appropriately apportioned among the various players. Comradery is sweet during good times but can become bitter under the stress of conflict.

By: Jacqueline Pons-Bunney, Esq.

Weil & Drage, APC

From [IRMI Update 343](#)

12 Get Rid of Obsolete Stock and Equipment

Sometimes manufacturing plants have overstock that becomes obsolete. It gets stored in a warehouse somewhere and is carried on the balance sheet as an asset. They pay insurance premiums, taxes, and waste valuable money housing items they will never use or sell.

Often, a better practice is to either have a “garage sale” and sell the obsolete items or simply dispose of them. The extra cost to warehouse obsolete items plus the chance of having a coinsurance penalty imposed because of being underinsured is too high. It is better to sell it at a loss than to continue to pay for things you do not use.

A plastics manufacturer in Dallas had a large warehouse half filled with obsolete or out-

dated stock. When we were talking about contents valuations, the manufacturer had not included these items, yet an astute adjuster would have included them to determine the insured value required by the coinsurance provision if there had been a major loss. The manufacturer had a garage sale and made at least some of its money back on the product while reducing its warehouse, taxable inventory, and insurance costs.

This could apply to obsolete equipment as well.

*By: Mary Roth, CPCU, HB
Staff Training Programs
From [IRMI Update 9](#)*

13 Remember Products Liability When Disposing of Stock and Equipment

Mary Roth's Risk Tip, to dispose of obsolete inventory or equipment rather than store it indefinitely, makes great sense. This holds true whether by sale, as Mary suggests, or by donation to charity. If there is any probability that the equipment will be used again, there are product liability risks associated with its disposal that you need to manage.

Some things to consider when deciding to sell or donate used equipment include:

- ✓ How hazardous is the equipment?
- ✓ What was wrong with the equipment for it to become expendable?
- ✓ Was it too old to operate, did not operate properly, or were replacement parts unavailable?
- ✓ If the original manufacturer or seller has gone out of business, the seller of used equipment may have full liability.

Some measures to consider to help mitigate this product liability exposure include:

- ✓ Obtain advice of qualified legal counsel to be sure all mitigation measures are appropriate.

- ✓ Make it clearly understood, in writing (such as in a sales agreement), that the equipment is being "sold as is."
- ✓ Specify what "sold as is" might mean, i.e., with no inspections, testing, reconditioning, or repair performed.
- ✓ Recommend that the buyer or recipient have it inspected and tested before it is used and repaired or upgraded as needed to be sure it is safe for use.
- ✓ If there are any known safety hazards or deficiencies, identify them, and either repair them or recommend that the buyer/recipient repair them. It might be best to just scrap the equipment and not sell it or give it away.
- ✓ Include an indemnity clause specifying that the buyer or recipient holds the seller (or company who donates the equipment) harmless for all liability, legal fees, and expenses, etc., arising out of the use of such equipment.

By: Kenneth E. Ryan
FCCI Insurance Group
 From [IRMI Update 10](#)

14 Prepare Superior Underwriting Presentations

It amazes me how few agents and brokers appear to take the time to adequately prepare underwriting presentations on behalf of their clients. In that light, here are what I perceive as the three deadly sins.

1. If you don't know more about the risk than the underwriter, you lose.

It is immaterial what the risk is—know “everything” possible about it. If that means studying subject matter, so be it. For example, if the presentation covers a chemical risk, understand the chemicals, know whether they are potentially explosive, reactive, nonreactive, etc. Fully understand the physical risk, and have a clear handle on losses and loss potential.

2. For goodness sake, stop using ACORD forms. Present your clients in a format that includes:

- ❖ An executive summary

- ❖ General and physical information of the potential risk
- ❖ Safety or industrial certifications, e.g., ISO 9001, and espouse on their value
- ❖ Coverage specifications
- ❖ Full underwriting information
- ❖ Complete loss data and, if casualty oriented, you had better be prepared to defend trended and developed losses
- ❖ Premium expectations

3. Never, never ask for a quote. Advise underwriters of premium expectations and be able to defend them.

By: Peter Polstein

IRMI.com Expert Commentator

From [IRMI Update 48](#)

15 Smooth the Risk Wrinkles That Come with an Aging Workforce

The changing face of today's workforce is adding a few wrinkles to the way risk managers handle escalating costs of medical, wage replacement, and lost productivity. Chronic conditions, such as heart disease, arthritis, back problems, respiratory disease, and diabetes lead the way in medical care of the over-55 population. One of the best ways to combat rising medical costs for these chronic conditions is to address the lifestyle issues contributing to their onset and management and to promote healthy life choices. What can you do?

- ✓ Encourage employees to become educated about their health issues.
- ✓ Offer Health Risk Appraisals to employees.
- ✓ Introduce Disease Management Programs to promote healthy behavior.
- ✓ Make healthy food options available.
- ✓ Encourage exercise.
- ✓ Discourage unhealthy habits by prohibiting workplace smoking.
- ✓ Employers with large employee concentrations may benefit from on-site medical facilities.
- ✓ Employee Assistance Programs (EAPs) can assist employees with family and home issues that sometimes emerge when managing long-term chronic conditions.
- ✓ Allow for breaks. Build limited mobility into work tasks. Being sedentary or standing for long periods can be taxing on an employee with a health condition.
- ✓ Conduct periodic ergonomic assessments.
- ✓ Allow for breaks in concentration and focus by dividing tasks into shorter cognitive units.
- ✓ Establish a safety committee. Recognize and reward valuable safety suggestions.
- ✓ Build in accountability for safety at the front-end supervisor level.

*By: Wendy Manners
Specialty Risk Services
From [IRMI Update 94](#)*

16 Implement Win-Win Fire Safety Training

We're a medium-size property management company handling mostly apartment complexes and senior housing. Fire safety is one of our major concerns, especially with the senior housing. We've arranged for the local fire departments in various communities to come out to our locations and supervise a fire drill. While there, they also are given an opportunity to demonstrate some of their equipment. They've shown our tenants how to operate a fire extinguisher and explained what to do and what not to do in case of a fire. On a couple of occasions, we've given them permission to use our building for a practice ladder exercise.

These demonstrations are a tremendous benefit to our tenants and staff, and additionally,

they're very entertaining. The fire crews love it as well as it gives them an opportunity to promote fire safety and show off some of their new equipment. It's also great for community relations. Our insurance underwriters love it too.

We started this program with our senior housing in mind, but we're now expanding it to all our multifamily units and even to our office building properties. It's becoming an entertaining, educational, awareness developing, social event at many of our properties.

*By: Dennis Engstrom
The Newbury Companies
From [IRMI Update 120](#)*

The IRMI Library Covers It All!

The IRMI reference library for risk management, insurance, and legal professionals covers virtually every type of property and casualty insurance available as well as risk management practices, risk finance strategies, contractual risk transfer tactics, and industry trends. The library is organized by topic which allows you maximum flexibility to select and pay for only the titles that fit your needs. Most IRMI reference publications are available in print and over the Internet via IRMI Online or ReferenceConnect. Learn more about the IRMI Library on IRMI.com.

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17 Yes, You Really Need Cyber-Liability Insurance

Do we really need cyber-insurance? I get asked this question frequently. Many business owners are under the impression that only organizations that market online, collecting their customers' credit card information, are at risk. This is not true. As you've no doubt read in the news, cyber-hacking is on the rise, and any business network is at risk for hacking. If this happens, the result is often a release of information that is supposed to be private: employee records, Social Security numbers, customer information, etc. This is desirable information for a hacker and can lead to their criminal profit. It also creates a liability for the business that has been hacked. Large companies, such as Sony, Home Depot, Target, and Burger King, have been hacked, and it can

happen to small companies as well. This is true despite all efforts at network protection.

In response to the hacking risk, most standard liability insurance policies are now endorsed to exclude liability for any data breach. The exclusion, Insurance Services Office, Inc., CG 21 06 05 14, is titled "Exclusion—Access or Disclosure of Confidential or Personal Information and Data-Related Liability." All this considered, having an insurance policy that specifically protects your business against cyber-liability risk makes good sense.

By: Joe Pilato, CPCU

Cook Maran & Associates

From [IRMI Update 190](#)

18 Think Like an Underwriter

Many small business owners outsource much of the regular day-to-day insurance management/selection functions to an insurance company representative or agent/broker. However, it is important to retain control over your loss and coverage information and know how it is being presented to potential insurers. To achieve the greatest satisfaction relative to your insurance requirements and your associated servicing and pricing expectations, you have to think like an underwriter and be prepared to provide what they need to write your business. Build and maintain a risk profile so you can show a historic record of your exposures, loss data, and insurance contracts. It is important that you maintain the file—you don't want to depend on past insurers for this historical loss and coverage information. Keep it on hand and current:

- ✓ **A narrative/history of the firm**—Be positive and realistic. Well-managed accounts that have adapted well during all economic cycles will result in an underwriter competitively pricing your business.
- ✓ **Resumes of key management**—Show you know your business and have a great team behind you.
- ✓ **Sales brochures/Web pages**, if applicable.
- ✓ **D&B Report on your business**—If D&B is unable to complete a report, you may get a lower financial grading. Had a few bumps in the road financially?

There are companies willing to work with you, but less so if they have to pull teeth to get the information.

- ✓ **Audited financials**, if applicable.
- ✓ **Estimated values**, including sales, workers compensation payroll, automobile fleet, and property and equipment.
- ✓ **Historic sales, payroll, and auto units** for the past 5 years
- ✓ **Insurer loss runs/claim runs** of the previous 5 years for all policies, valued within 90 days of your renewal.
- ✓ **Outline of your safety plan(s)**.
- ✓ **Fleet maintenance schedules**.
- ✓ **Your workers compensation experience modification factor**, if applicable.

Insurance companies have invested greatly in computer systems that track all client insurance data. Be sure to review this information for accuracy and add it to your own database. By maintaining your insurance profile information in a comprehensive, accurate, and current manner and staying on top of how that information is being presented, you stand a far better chance of securing a competitive and effective insurance program.

By: Ted McKenna
AIG Small Business Construction
 From [IRMI Update 173](#)

19 Allow Adequate Lead Time for Competitive Quotes

If you are a commercial property and casualty insurance buyer, you have no doubt been frustrated that your renewal proposals are often presented 1 or 2 days prior to the effective date of coverage. This leaves little time for analysis, questions, and negotiation. The sad fact is that, with an eye on expense ratios, insurance companies have stretched their underwriting staffs to the limit. Underwriters with growing workloads struggle to deliver program quotes by the deadlines that agents and customers establish.

The best way to combat this trend is to start the quote process as early as possible. Working 90 days in advance of your program

renewal is advisable. This allows for the extra time needed for underwriting questions (which are not always asked immediately), loss control inspections, and negotiation by your agent. An underwriter is more likely to meet a requested deadline if a company's specifications and information are presented with more than minimum lead time.

So, next time an agent calls you in August to quote your November renewal, remember that that's a good thing!

By: Joseph L. Pilato, CPCU

Maran Corporate Risk Associates

From [IRMI Update 141](#)

20 Use Quick References for Insurance Information

Most organizations require multiple insurance policies to cover all their risks, and it is not uncommon to have several similar types of policies in effect (e.g., general liability, umbrella, E&O liability, and D&O liability insurance). This can easily lead to confusion as to what constitutes a “claim,” when it should be reported, and to whom.

We designed “cheat sheets” for our clients that they can attach to the outside of the file jacket. It provides the definition of “claim,” along with a simple plain-English explanation. The reporting requirements are also

summarized: how to report, to whom, and what information should/must be included.

We also provide them with a cross-reference to other policies that might be affected by the receipt of a claim. This gives the client a logical starting point and cuts down on time spent looking for and reviewing policies.

We always remind them that the insurer has the final say on whether coverage is afforded.

By: Stephanie A. Cafiero
Callie Consulting & Insurance Services
From [IRMI Update 169](#)

Get 20 Free Tips for Improving Directors & Officers Liability Insurance Coverage

The editors of *D&O Compass* and *D&O MAPS* have prepared a special twenty page report providing actionable suggestions for improving D&O coverage or programs designed to manage D&O liability exposures. Important coverage issues for you to consider when buying, selling, or underwriting D&O insurance are highlighted with realistic suggestions for addressing each. *20 Ways to Improve Directors and Officers Liability Coverage or Practices* which can be downloaded from IRMI.com at no cost when you sign up for *D&O Compass*, our monthly e-mail newsletter focused on management liability insurance and risk management. Each monthly issue of *D&O Compass* will provide you at least one new insurance or risk management tactic gleaned by the authors from their study and comparisons of D&O policy forms and legal cases interpreting D&O insurance coverage provisions. This special report and an annual subscription to this popular newsletter is easily worth \$100, but it is yours free from IRMI.

Download your special report and register for the [free newsletter subscription](#) today.

21 Obtain a “Knowledge of Occurrence” Endorsement

MA key responsibility of a property loss control representative is to calculate the loss expectancy from fire at an insured location. This is an important calculation in property underwriting. The amount of capacity a property insurance company is willing to commit is generally tied directly or indirectly to this figure. Most underwriting guidelines require a “worst-case” loss scenario, such as assuming impaired protection or a total burn out, to conservatively manage capacity. Because this is a low-frequency/high-severity scenario, it is not much help to a risk manager.

However, loss control may also calculate a Normal Loss Expectancy (NLE) of a risk. This is the estimated fire loss with all protection in place and working as designed. Underwriters like this calculation because it helps them to frame the relationship between “normal” and “worst-case” scenarios. The further apart the numbers, the better. Most property losses fall

into the NLE scenario (everything works as expected), so this is considered a good estimate of more-likely losses.

NLE can be a very helpful calculation for a risk manager for several reasons. It can help with prioritizing risk management initiatives. For example, if the NLE calculation showed a large loss in a manufacturing area, the risk manager may implement a robust contingency plan to minimize the potential business income loss. Also, when there are deficiencies in protection, calculating an NLE “as is” and an NLE with the deficiencies corrected can help prioritize spending on risk improvements. Finally, the NLE scenario can help risk managers evaluate potential losses from other exposures, such as workers compensation.

By: Robert Medeiros
Lighthouse Consulting LLC
From [IRMI Update 355](#)

22 Take Action before, during, and after the Premium Audit

Before your premium audit, be sure your exposures are accurate:

- ✓ Notify your broker when changes occur that affect your workers compensation (number of employees, job classifications, payroll, states of operation) or commercial general liability (payroll, sales, area or other basis for premiums) policies. These changes could affect not only the cost of your insurance, but also the insurer's obligation to cover a claim.
- ✓ Understand what "remuneration" does not include, such as: expense reimbursement to employees, contributions to benefit plans, work uniform allowances, and perks such as company-provided vehicles. Make sure your payroll records identify the officers, so the auditor can cap their compensation.
- ✓ Track overtime pay separately—both by individual employee and for all employees in a classification, so overtime is counted as straight time for workers compensation.
- ✓ Verify that your contractors have their own insurance in force. If you don't, their payroll becomes your payroll. If your contractors can't provide certificates of insurance, charge back to them the portion of your insurance cost that is based on their payroll. Follow the IRS

criteria to make sure your contractors are "independent."

- ✓ Monitor your claim reserves so your debit or credit modification reflects current reserves.
- ✓ Once notified of an audit, conduct a "dry run" to compare your projected results with the actual audit.

During the premium audit:

- ✓ Have available your federal and state tax reports, ledgers, checkbooks, contracts, 1099s or other documents the auditor specifies.
- ✓ If conducted at your site, stay in the room during the audit to answer questions.
- ✓ Make sure rates and classifications on the audit match the current policies.
- ✓ Make sure officers are identified.
- ✓ Ensure the "experience modification factor" used on the workers compensation audit, and any experience calculations used for the commercial general liability policy, are current. If you are not sure the auditor's worksheets reflect your actual claims experience, have the auditor check the claim files.
- ✓ If there's an error on the experience modification factor, make sure the insurer

notifies the National Council on Compensation Insurance to make the correction.

- ✓ Get copies of the draft worksheets from the auditor.

After the premium audit:

- ✓ Compare draft worksheets with the final audit. Check for simple mistakes like transposition errors.
- ✓ Make sure overtime was not charged inappropriately.
- ✓ Ensure no contractors were classified as employees if you had certificates for

them and they satisfied the IRS “independent contractor” criteria.

- ✓ Make certain former employees are not shown on the payroll unless they actually worked during those policy periods.
- ✓ If an error in the experience modification factor was discovered, make sure the insurer corrects it.
- ✓ Keep in place all the controls described in the first part of this article.

*By: William Henry
The CIMA Companies, Inc.
From [IRMI Update 174](#)*

About IRMI®

Since 1978, International Risk Management Institute, Inc. (IRMI) has been a premier provider of practical and unbiased risk management and insurance information to corporations, law firms, government, and the insurance industry. This information is developed by the most experienced research and editorial team in insurance reference publishing in partnership with a host of industry practitioners who work with us. We take great pride in giving you up-to-date, objective, and practical strategies, tactics, and solutions to help you succeed and prosper in a changing insurance and risk management environment. You can obtain this information in the books, reference manuals, and newsletters we publish in a variety of print and electronic formats, our online continuing education courses, and our seminars and conferences.

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23 Promptly Provide Insurers with Notice of Lawsuits

Sometimes risk and insurance professionals are reluctant to give notice to insurers of potential business litigation lawsuits when it isn't clear that the event is covered under their policies or in fear that future premiums will be adversely affected. Electing to not provide notice of claims is problematic for at least five distinct reasons.

1. Since the duty to defend is broader than the duty to pay, a defense may be available even if any subsequent settlements or awards aren't covered. Cash flow recognized from defense fee reimbursement in such cases can be significant.
2. Insurance brokers' exposure to errors and omissions claims rises when potentially covered claims of which they are aware are not reported to insurers.
3. Difficulties in discerning when the first alleged wrongful conduct occurred that might trigger coverage could cause the analyst to apply the wrong policy terms to the coverage analysis.
4. Most jurisdictions follow the rule that a narrowing of insurance coverage that is not brought to the insured's attention cannot be applied. Thus, pre-wrongful acts inception policies must also be reviewed.
5. Current business litigation exposure is but one of the liability risks to be assessed by underwriters upon renewal. Anecdotal evidence seems to indicate that premium adjustments rarely occur in connection with this claims activity.

In summary, it is wise to carefully consider submitting any legal liability claim against the organization to insurers, even if it initially appears to involve issues and circumstances beyond the scope of the insurance program. Reporting claims will avoid allowing the insurer to later use late reporting as a defense to providing coverage. As the litigation matures and more facts become known, a final coverage determination can be made.

*By: David Gauntlett
Gauntlett & Associates
From [IRMI Update 101](#)*

24 Avoid a Carbon Monoxide Headache

Carbon monoxide is colorless, odorless, and deadly. One of the early signs of carbon monoxide poisoning is a severe headache—and that’s exactly what many insureds get when they submit a liability claim resulting from death or injury due to carbon monoxide poisoning. Insurance companies argue that such claims are barred by the CGL pollution exclusion. (See [“Pollution Exclusions in CGL Policy Bars Coverage for Carbon Monoxide Poisoning.”](#))

The pollution exclusion was intended to eliminate coverage for catastrophic Superfund environmental exposures, but it is often read to exclude claims that were accepted by insurers without problems under previous policy wordings. To ameliorate this problem, Insurance Services Office, Inc. (ISO), has over the years added exceptions to the pollution exclusion that provide coverage for claims arising from such things as hostile fire, motor vehicle lubricants, etc. A broadening was the addition of an exception for claims due to fumes, etc., from equipment used to heat, cool, or dehumidify a

building or to heat water for domestic use. This coverage is included in the ISO commercial general liability (CGL) forms (e.g., CG 00 01 12 07).

That’s the good news. The bad news is twofold: (1) not all carbon monoxide cases arise from heating, etc., equipment (the one in the IRMI article mentioned above didn’t); and (2) many larger insurers use their own forms when insuring middle-market and national accounts. In reviewing policies for our clients, more often than not we find non-ISO CGL policies, and in a surprising number of cases, we find the broadened wording missing.

You have to seek amendments to those policies to close the gaps. Better policy wording beats telling your client to take two aspirin and call a doctor if the pain persists.

By: Jerry Trupin, CPCU, CLU, ChFC
Trupin Insurance Services
From [IRMI Update 186](#)

25 Clearing Your Office Is Good Risk Management

It is amazing how much customer private information is left on an employee's desk at lunch hour and at breaks. We recommend that screen savers with passwords be used on computer workstations when employees are away from their desk. This is a simple and cheap way to enhance the security of private information which employee's must have access to but must otherwise be protected. We suggest screen saver passwords be changed monthly by management and access to them be limited. We also recommend that desktops be cleared at night so that cleaning personnel and others do not have immediate access to information that is confidential. Information is just as valuable as your bank account in today's business environment.

Ask your clients to walk with you around their office after closing. You will be amazed how much confidential information remains on desktops overnight. Even more amazing is that many times we find that employees do not have a clear understanding of how much damage can be done if the information falls into the wrong hands. A frank talk with employees about this issue and vigilant monitoring are the least expensive forms of risk management. You do not have to be a computer technician to develop ways to make your client's office operation more secure.

By: Chester A. Butler, III
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From [IRMI Update 44](#)



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