csurma

California State University Risk Management Authority

Part 1

The Basics

Insurance Requirements in Contracts 2020: New Information for a New Reality

Alliant

Presenters

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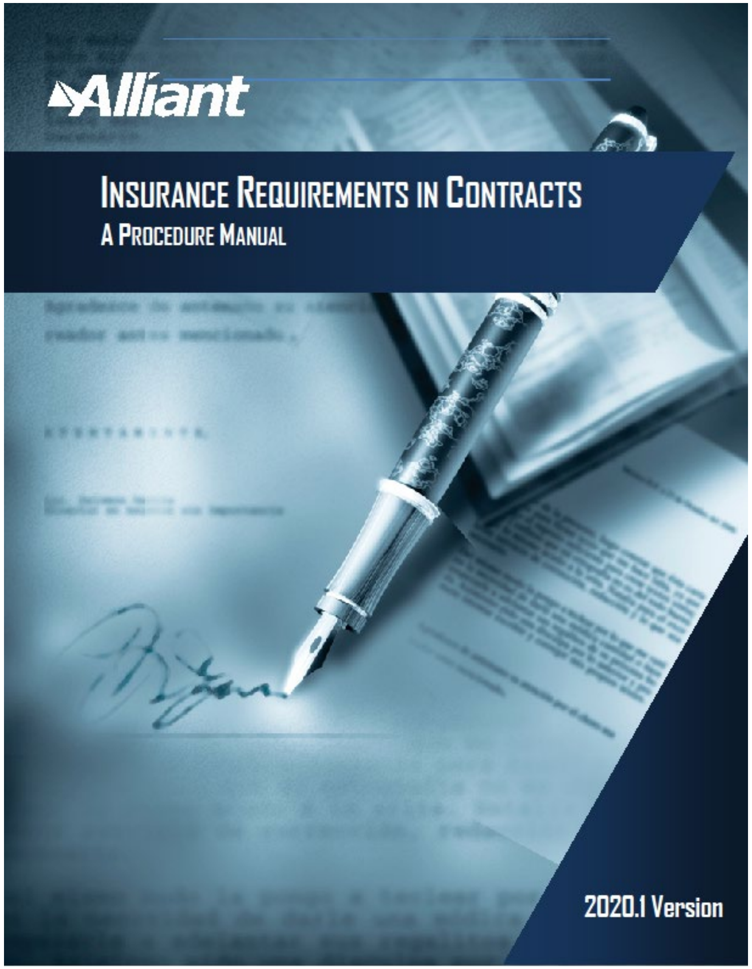
IRIC Manual History



- Stems from work by public entity risk managers and consultants since the 1970's
- Relied upon by hundreds of public entities
- Regular updates responding to new issues
- Version 2020 published and customized for CSU community
- Versions available at the CSURMA.org and Alliant.com websites

IRIC 2020 Update

- Three **NEW** FAQ's to address:
  - **34.** How can we ensure coverage for competed operations?
  - **35.** Is my independent contractor really an independent contractor?
  - **36.** Dispelling the myth of 'following form" excess insurance coverage
- **Chapter 2 adds** discussion on following form excess coverage
- **Chapter 3 adds** Owners and Contractor's Protective Coverage (OCP) discussion
- **Chapter 7 adds** discussion on cash receipts & handling with Fidelity Bonds and Crime Insurance
- **NEW Chapter 8** – Schools and Other Youth Serving Organizations
- **NEW ISO Forms CG 20 39, CG 20 40, CG 24 53**


Recent Additions to IRIC

- Technology Risks – **New Chapter**
  - Alliant engaged Marjorie Segale to edit a new chapter on Technology Risks
  - Discussion/sample requirements for cyber risks including IT consultants, software vendors and cloud providers
- Aviation Risks – **New Chapter**
  - Alliant added a new chapter on Aviation Risks
  - Discussion/sample requirements for operation of airports, aircraft, fixed base operators and UAV/Drones
- Marine Risks – **New Chapter**
- Schools and other Youth Serving Organizations – **New Chapter**
- **New** ISO Forms Added to Exhibits **CG 20 39, CG 20 40, CG 24 53**

Presentation Outline

- Indemnification
- Insurance Requirements
  - Impact of new ISO 04 13 forms
  - Drafting to fit the need
- Verification of Coverage
- Document Retention Policy & Procedure
- Claims
- Sources of Knowledge
- Conclusion & Questions

Poll

- When reviewing an agreement, it's most important to:

A. Verify and negotiate types and limits of insurance

B. Address indemnity verbiage first

C. Analyze termination clause

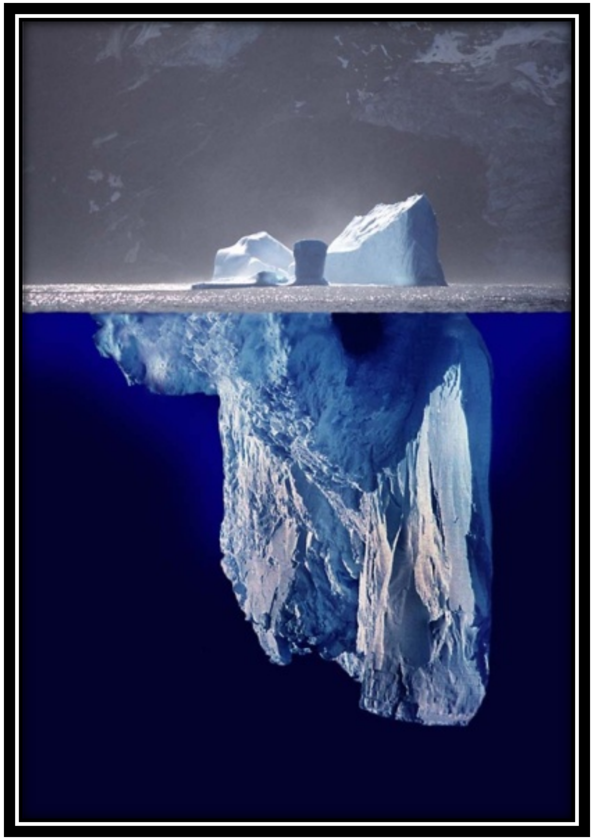
D. Address the font

Hidden (and Uninsured) Costs of Accidents

- Time lost from work by injured
- Lost time by fellow workers
- Loss of efficiency due to breakup of crew
- Lost time of supervision

- Decreased output of injured worker on return
- Cost to hire replacement employee
- Cost of training and/or break-in of new employee

Hidden (and Uninsured) Costs of Accidents



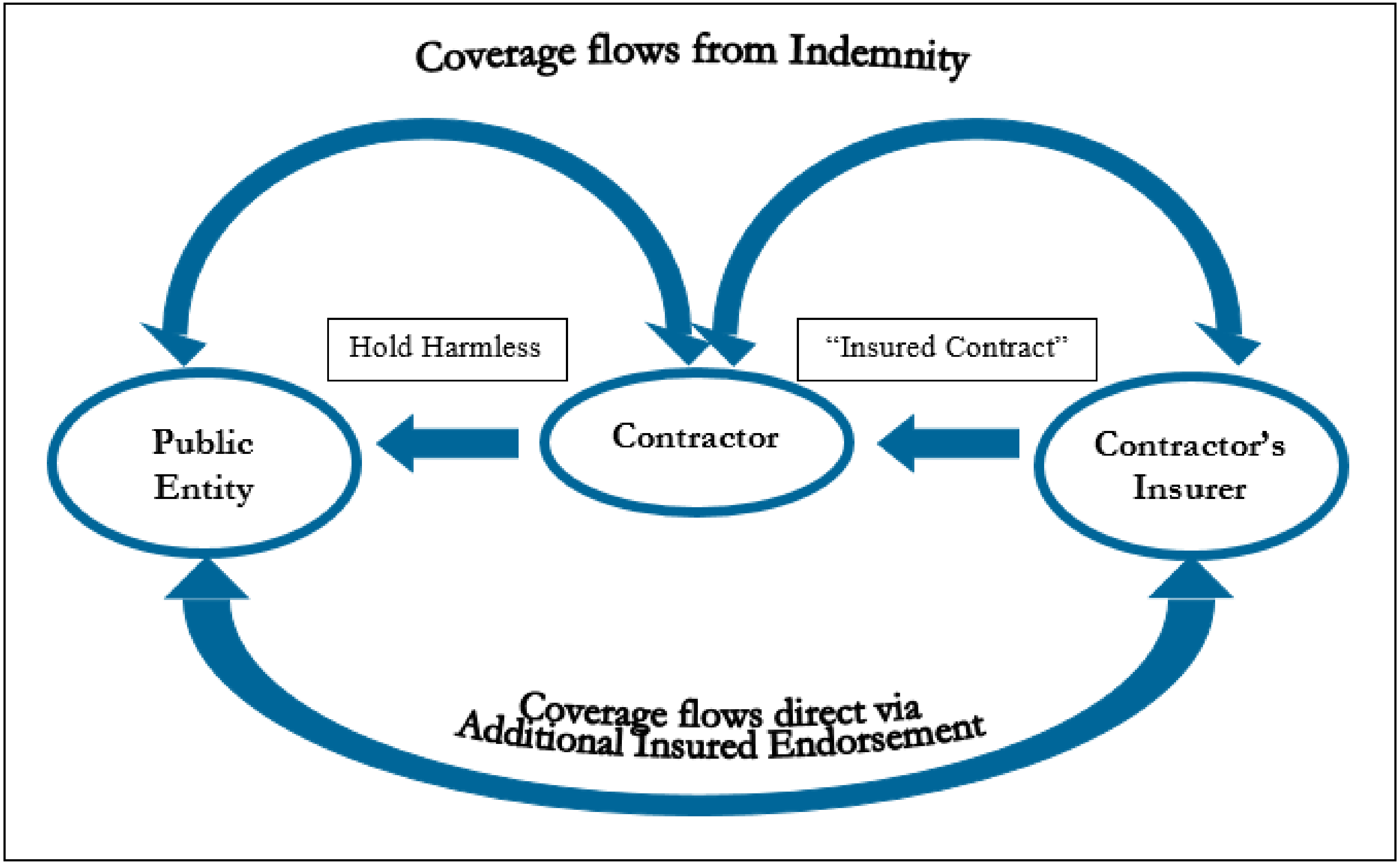
- Overtime paid to remaining employees
- Clerical time
- Building or facility damage
- Tool and equipment damage
- Production and/or schedule delays and liquidated damages potential

From International Risk Management Institute, Inc.

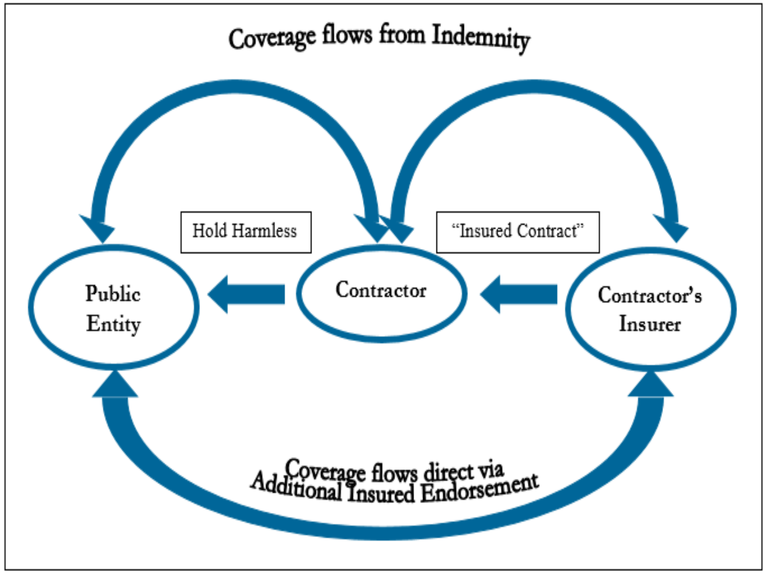
Indemnification – How Does it Work?

- Insurance language flows from agreements made in indemnification
- Insurance is the "collateral" for the indemnification. Ensures that there are funds available to back up most of the indemnity provisions
- Start with negotiating Entity’s preferred indemnity language and then move on to the insurance to support the indemnity

Hold Harmless vs. Additional Insured



Hold Harmless vs. Additional Insured



Three Main Types of Indemnification

1. Strict "Type I" Indemnification
   - Contractor indemnifies entity for all claims costs arising from project except entity's Sole Negligence or willful misconduct
2. Intermediate "Type II" Form (Construction)
   - Contractor Indemnifies except for entity's active negligence or willful misconduct
3. Limited "Type III" Form
   - Contractor indemnifies for contractor's negligence
   - Can be used for cross indemnity comparative negligence

See OGC requirements.

Note On Hold Harmless Agreements:

- It is important to make certain that attorney fees and litigation expenses are assumed by the contractor in the indemnity and hold harmless section of the contract. Failure to do so will result in these expenses not being covered.

Additionally, the new Commercial General Liability form restricts defense costs to only those lawsuits involving issues that are covered perils under the contractor's insurance

Just Say No?
Where to Draw the Line

- At what point will the Entity be so exposed that the proposed indemnity clause is too risky?
- Recommendation: Focus on indemnification before insurance
- Recommendation: Involve Entity's Risk Management team in negotiations that deviate from approved indemnity language

Additional Insured Endorsement

- The most preferred insurer endorsement is Insurance Services Office (ISO) Form No. CG 20 10 11 85, covering damages arising from "your work". 11 85 = rev. date = Nov. 1985
- Covers both "products and completed operations" ("your work") as well as "ongoing operations", with potential to cover your sole negligence as well
- Newer forms may have to be accepted – rev. dates 10 01, 07 04, or 04 13

Additional Insured Endorsement

- Newer endorsements forms that are acceptable, if CG 20 10 11 85 not available:
- CG 2010 10 01 = “ongoing operations”
- CG 2037 10 01 = “your work” = “products – completed operations hazard”
- Must have both to get the same coverage as the 11 85 form
- The 07 04 and 04 13 versions of the forms above eliminate coverage for your sole negligence

New ISO Forms - Construction

- **Old Way:**
  - > Combine the AI for ongoing operations CG 2010 or CG 2026 (construction) plus the CG 2037 (for completed operations).
  - > Note: Your entity has to be scheduled (shown) on the 2010 or 2026 & 2037, and should be shown as named in the underlying contract.
- **New Way:**
  - > Combine the CG 2033 (Blanket ongoing operations) with NEW CG 2039 (Blanket completed operations in WRITTEN construction agreement).
  - > Note: Your entity does not have to be scheduled on these endorsements as they apply on a blanket basis.

New ISO Forms - Subcontractors

- **Privity of contract – Your entity does not directly have a contract with the subcontractor**
  - Your contract with prime must require subcontractors of every tier to indemnify and have insurance for entity.
- **New Way:**
  - Combine the **RELATIVELY NEW** CG 2038 (Blanket ongoing operations, contract not with you) with **NEW** CG 2040 (Blanket completed operations, contract not with you).
  - Note: Your entity does not have to be shown on these endorsements as they apply on a blanket basis where required by “other parties when required in a written construction agreement.”

New ISO Form - Subrogation

- "Waiver of Transfer of Rights of Recovery Against Others to Us"
  - AKA "waiver of subrogation."
- **Old Form** – CG 24 04 – Scheduled
- **New Form** – CG 24 53 – Automatic (blanket)

Proprietary A.I. Endorsements

- Be wary of non ISO / carrier specific endorsements
- Can contain limitations, such as
  - Amended “Duties in the event of occurrence, claim or suit” Condition

Quiz

- What is the benefit of the new additional insured endorsement?

A. A sense of well being.
B. Provides better coverage then the old forms.
C. They are blanket, entity doesn’t need to be scheduled
D. None of the above

What is Claims-Made?

	Claims Made	Occurrence
Limits	Coverage will respond to incidents arising on or after the policy retroactive date and ***which are reported during the term of the policy.***	Coverage will respond to incidents arising from the coverage period - regardless of when those claims are reported.
Prior Acts or Retroactive Coverage	Policy may be endorsed to respond to incidents which occurred before the policy start date. also referred to as policy retroactive date.	***No prior acts coverage is needed***
Extended Reporting or Tail Coverage	Tail coverage responds to cover incidents that have not been reported to the company during the policy term. Some companies will offer a free tail for 30 days, at retirement, subject to certain conditions. Others charge up to 100% of premium.	***No tail coverage is needed*** because incidents that occurred during the policy period are covered no matter how much later they are reported.

What are the solutions?

- Review and redraft standard insurance conditions for all agreements
- Separate indemnity language for construction agreements
- Consider Owner's Protective Professional Indemnity (OPPI) coverage
  - sits excess of other coverage just for owner
- Consider OCIP or ROCIP
  - New programs can handle smaller projects

Insurance Requirements
Drafting to Fit the Need

- Evaluate the risk
  - **Who** could be harmed? Visitors attracted?
  - **What** are the activities and maximum likely loss? Dangerous? Crowds? Pollution? Alcohol?
  - **Where**? On vs. off Entity premises? Site control?
  - **When**? Night? During sporting events?
  - **How** likely would the Entity be a defendant if there is a loss?

The Risk Management Process

- Identify exposures
- Analyze exposures
- Consider feasibility of alternative techniques to treat exposure
  1. Prevention/reduction
  2. Retention
  3. Risk financing
  4. Avoidance
  5. Transfer

- Select the best technique
- Implement technique
- Monitor results and change as needed

The Basics

- Avoid terms that do not have meaning in the insurance industry
- Request coverage on an "occurrence" basis, except professional liability or pollution liability can be "claims-made."
- Describe maximum deductibles or self insured retentions
- Require the addition of the Entity, etc. as an additional insured by endorsement to all policies except workers' compensation and professional liability

The Basics (cont'd)

- Require the other party's insurance be primary
- Require notice of cancellation
- Require an aggregate limit higher than the occurrence limit (note TULIP program has 1x agg.)
- Specify that insurance be placed with insurers that meet an A.M. Best's minimum rating of A:VII
  - Is the carrier strong enough to back the insurance contract that is backing the indemnification language?
  - Management Rating = Letters
  - Financial Size Category = Roman Numerals
  - A "Cut-through" endorsement to a higher rated reinsurer may be used to solve a low rated carrier problem with SORM review

The Basics (cont'd)

- Require that the contractor's insurer waive subrogation against Entity
  - Subrogation is the requirement that the insured transfer rights of recovery to the insurer.
    - i.e.. – Insurer pays claim for property damage, seeks recovery from third party – Entity does not want to be that third party!
  - If necessary, only waive Entity's right to subrogation on property, and even that creates significant exposure.
    - Example claim: The vending machine

Insurer Ratings – Will they be there to pay the claim?

- Two Main Insurer Rating Agencies
  - Standard & Poor's
  - A.M. Best

Best's Ratings		Standard and Poor's	
A++, A+	Superior	AAA	Extremely Strong
A, *A-*	*Excellent*	*AA +/-*	*Very Strong*
B++, B+	Very Good	A +/-	Strong
B, B-	Good	BBB +/-	Adequate
C++, C+	Fair	BB +/-	Less Vulnerable
C, C-	Marginal	B +/-	More Vulnerable
D	Below Minimum Standards	CCC +/-	Currently Vulnerable
E	Under State Supervision	CC +/-	Currently Highly Vulnerable
F	In Liquidation	R	Under Regulatory Supervision

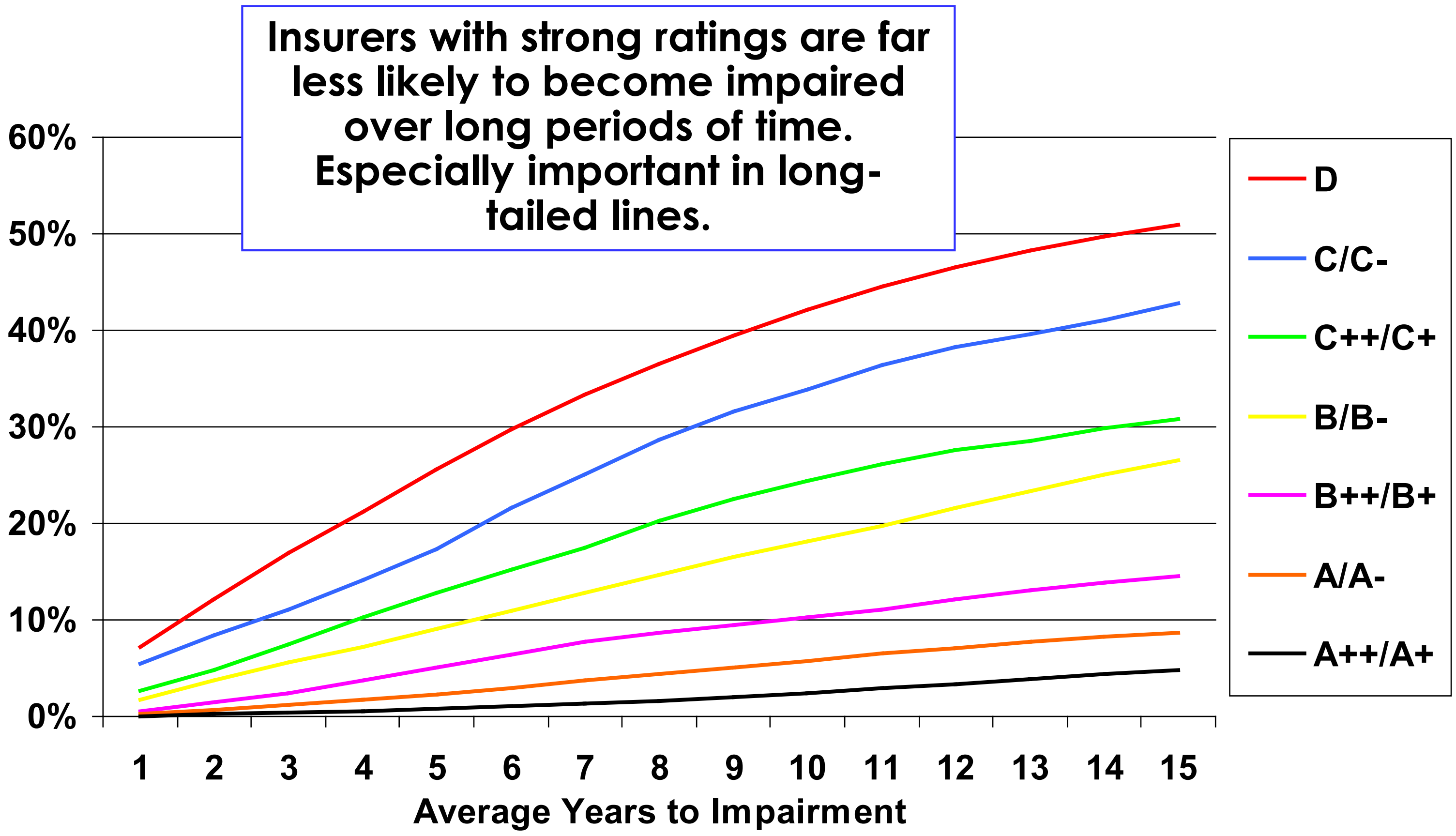
+,- These signs following the letter rating indicate the relative position within the class
Italics represent minimum recommended.

Best's Financial Size Category (FSC)

- Reported Capital, Surplus and Conditional Reserve Funds (in Millions)

FSC VII	$50 to $100 – Minimum rec.
FSC VIII	100 to 250
FSC IX	250 to 500
FSC X	500 to 750
FSC XI	750 to 1,000
FSC XII	1,000 to 1,250
FSC XIII	1,250 to 1,500
FSC XIV	1,500 to 2,000
FSC XV	Greater than $2,000

Cumulative Average Impairment Rates by Best Financial Strength Rating*



*US P/C and L/H companies, 1977-2014

Sources: A.M. Best: *Best's Impairment Rate and Rating Transition Study—1977-2014, August 21, 2015*

How Much Coverage is Enough?

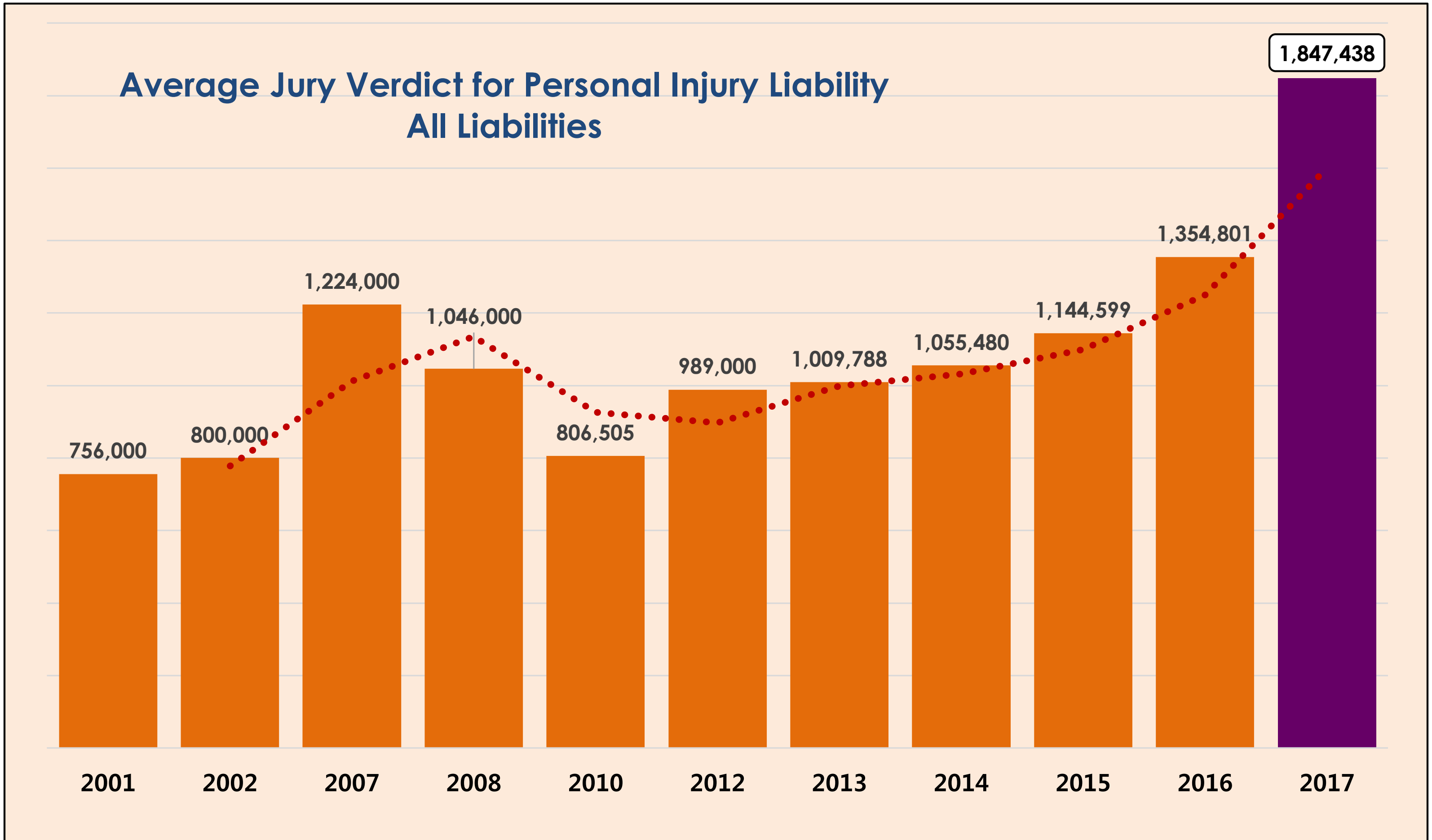
- Guidelines matrix
  - High, Moderate, Low
- Tort costs increased 5.1% in 2010, – 8.7% average annual increase since 1951!

  (Towers Watson's US Tort Costs: 2011 Update)

  $1 million in 1986 is over $4 million today with PV based on COLA

  $1 million in 1986 is over $9 million today with PV based on tort inflation
- Jury verdicts continue to rise
  - (See www.iii.org)
- Analyze the Exposure
- Maximum Possible vs. Maximum Probable Loss

Jury Verdicts & Social Inflation



Source: Insurance Information Institute / Thomson Reuters

Project Name/Purchase ______________________

Check One: ☐ Construction ☐ Services (specify) ______________

☐ Purchase ☐ Lease (specify) ______________

Insurance Company Ratings, Coverage and Limit Guideline

BEST Secure Ratings						NOT RECOMMENDED		
Superior	A++	A+	Excellent	A	A–	Very Good	B++	B+

BEST Financial Size Categories		NOT RECOMMENDED
Class XI – XV	Class VII – X	Class I - VI

Coverage Minimum Limit Guidelines

Form	Basis	High Risk	Medium Risk	Low Risk	NOT RECOMMENDED		Approved Amount	N/A
CGL	Occurrence	$5 million	$2 million	$1 million	$500,000	$250,000		
	Aggregate	$10 million	$5 million	$2 million	$1 million	$500,000		
BAC	Occurrence		$2 million	$1 million	$500,000	$250,000		
WC and EL		Statutory Limits						
		$1 million			$500,000	$250,000		
++++ Option for sole proprietors and excluded employees ++++								
	Health Ins	Employment related injuries not excluded						
	Disability	Comparable to Statutory limits						
CC/BR		Completed Project Value						
Property		Full Replacement-No Coinsurance						
E&O/PL	Occurrence*	$10 million	$5 million	$1 million	$500,000	$250,000		
	Aggregate	$10 million	$5 million	$1 million	$500,000	$250,000		
Pollution	Occurrence*	$10 million	$5 million	$1 million	$500,000	$250,000		
	Aggregate	$10 million	$5 million	$1 million	$500,000	$250,000		
*Claims Made			5 year tail	3 year tail	1 year tail	no tail		

Indicate approved amount unless recommended coverage is not applicable

Recommendation ______________________ Date ________

Project Manager/Purchasing Agent

Approval ______________________ Date ________

Director Facilities Planning/Director Support Services

Alternative Risk Transfer Vehicles

- Evaluating a contractor's self-insurance or captive insurance program
- Declaration of self-insured retentions
  - Insurer must allow for third party satisfaction of SIR to trigger coverage
- When your organization is contractor:
  - Does your entity have traditional insurance, self-insurance, or pool coverage?
    - **CSU and its Auxiliary Orgs. use all 3 types**

Bid Situations

- Would your Entity decline a bid not meeting the minimum requirements?
- Drafting with wiggle room to allow your Entity to accept the best bid in light of all the facts and circumstances

When CSU is the Contractor

- Role Reversal
- Can the CSU or Auxiliary Organizations comply with the Insurance Requirements?

  - CSURMA's programs may have significant elements of self-insurance and pooling that is not traditional insurance

  - Pools issue "certificates of coverage" not "certificates of insurance"

  - The CSU and Auxiliary Organizations should include agreement language that allows for self-insurance and/or pool participation

Special Events

- If the user is providing insurance via ongoing insurance program, use standard insurance provisions such as $1 million per occurrence, $2 million annual aggregate.
- If a special events policy is providing coverage no split annual aggregate is needed as the policy is dedicated to that event (i.e. accept $1 million per occurrence).
- **Special** Special Events:
  - The reason the premium is so high is that underwriters have seen higher claims from this type of event.

Verification of Coverage

- Having a Process
  - What is your threshold for obtaining certificates, vs. policies vs. endorsements?
  - How do you determine the appropriate coverages and limits?
  - How do you determine and respond to non-compliance?
    - *Will the job be delayed or halted? Leverage after commencement?*
- Using the Process
  - HDIKT – How do I know that… an audit trail documenting compliance
- Get Involved Early
- Sample Certificate
- Sample Checklist

Sample Certificate

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California State University Risk Management Authority

Alliant

INTEGRATED INSURANCE & FINANCIAL SERVICES

Certificate of Liability Insurance (Annotated Form)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2 *This notice confirms the provisions of the California Insurance Code, §384. Other states have similar provisions. It states that the policy, not the certificate governs coverage.*

IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS ... S NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES ... RTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED ... OR PRODUCER, AND THE CERTIFICATE HOLDER.

... certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to ... itions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the ... lieu of such endorsement(s).

PRODUCER

1 *This block identifies the Agent or Broker.*

CONTACT NAME:
PHONE (A/C, No, Ext): FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE — NAIC #

INSURER A :
INSURER B :
INSURER C :
INSURER D :
INSURER E :
INSURER F :

INSURED

4 *The insured is your entity's contractor or lessee.*

3 *The insurer will be identified here. The insurer letter appears again near the left margin at "3" to show which insurer provides which coverage.*

COVERAGES CERTIFICATE NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS

***3**

GENERAL LIABILITY — COMMERCIAL GENERAL LIABILITY — CLAIMS-MADE / OCCUR — GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC

AUTOMOBILE LIABILITY — ANY AUTO — ALL OWNED AUTOS — SCHEDULED AUTOS — HIRED AUTOS — NON-OWNED AUTOS

UMBRELLA LIAB — EXCESS LIAB — OCCUR / CLAIMS-MADE — DED / RETENTION $

WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N — ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N/A — If yes, describe under DESCRIPTION OF OPERATIONS below

PERSONAL & ADV INJURY $ — GENERAL AGGREGATE $ — PRODUCTS - COMP/OP AGG $ — COMBINED SINGLE LIMIT (Ea accident) $ — ... - EA EMPLOYEE $

5 *This notice again states that the policy supersedes the certificate form.*

6 *These sections show the type of coverage provided through the agent or broker identified in "1" above. If the insured uses more than one broker, this certificate will not identify all existing.*

7 *These two columns show inception and expiration dates for policies identified. Pay special attention that coverage does not expire before or during your project or lease.*

8 *This column identifies limits per occurrence and aggregate for each type of coverage afforded. Pay special attention to low aggregate limits for public works-type contractors. Losses on other jobs may reduce your coverage.*

9 *This section will usually be used to restrict coverage to a specific job or lease. Watch for restrictions that would omit the coverage required by your specifications.*

11 *Cancellation provisions*

CERTIFICATE HOLDER

10 *Certificate holder is your entity.*

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

12 *The authorized representative of the insurer should be an employee, unless the agent or broker is specifically authorized to sign on behalf of the company.*

ACORD 25 (2010/05)

Sample Checklist

INTEGRATED INSURANCE & FINANCIAL SERVICES

Contract Review Checklist

HOLD HARMLESS / INDEMNIFICATION REVIEW

1. Contract Date/Parties:
2. Party(ies) Accepting Risk:
3. Type of Risk Accepted ☐ Negligence ☐ Other
4. Breadth of Risk Accepted ☐ Own ☐ Joint ☐ Sole
5. Nature of Damage/Injury Accepted: ☐ Direct ☐ Consequential
   Property Damage: ☐ Our property ☐ Other party's property ☐ Property of third persons
   Bodily injury/personal injury: ☐ Our employees ☐ Other party's employees ☐ Third party employees

INSURANCE REVIEW

No answer means either it is not mentioned in the contract or it is specifically rejected.

		Required of you		Required of Other Party	
1. Liability Insurance		YES	NO	YES	NO
a. Is it required?					
b. Limits of Liability		$	$	$	$
c. Special coverages required					
d. Occurrence vs. claims made coverage					
e. Named as additional insured					
f. Cross liability					
g. Contractual limits required					
h. Cancellation notice	# of days:				
i. Certificate or other evidence					
j. Other:					
2. Workers' Compensation		YES	NO	YES	NO
a. Is it required?					
b. Contractor's employee / borrowed servants					
c. Waiver of subrogation					
d. Federal acts					
e. All states and employer's stop gap					
f. Cancellation notice	# of days:				
g. Certificate or other evidence					
h. Other:					
3. Property Insurance		YES	NO	YES	NO
a. Is it required?					
b. Valuation method required		☐ ACV	☐ RV	☐ ACV	☐ RV
c. Additional named insured / additional insured					
d. Waiver of subrogation					
e. Cancellation notice	# of days:				
f. Certificate or other evidence					
g. Other:					
4. Automobile Liability Insurance		YES	NO	YES	NO
a. Is it required?					
b. Valuation method required					
c. Additional named insured / additional insured					
d. Waiver of subrogation					
e. Cancellation notice	# of days:				
f. Certificate or other evidence					
g. Other:					

Document Retention Policy & Procedure

- Your Certificates & Endorsements are your insurance policy
- How long does your campus or organization keep its own insurance policies?
- Alternative storage methods

Claims

- Responding to Loss Events
- Reporting to Contractor's Insurers
- The Subcontractor's Subcontractor
  - Chasing Certificates and Endorsements
  - Special Situations (such as Underwater Construction, Asbestos Removal, Blasting)
  - The benefit of new ISO 20 38 form
- Negotiating Your Coverage

Final Reminder !

- All older agreement forms and purchase order forms have positively got to be updated in very strong and clear language to show that:
  - Required Limits are **MINIMUMS**
  - Your entity is entitled to **ANY** insurance available to the contractor.

Sources of Knowledge

- Peer and affinity groups
- Campus Risk Management team
  - Access to their resource pool
- Systemwide Office of Risk Management
  - Mainline (562) 951-4580
- CSURMA Program Administrators at Alliant
  - Mainline (415) 403-1400
- The risk management community
  - Manuals
  - Feedback through campus risk management
  - Developing a library based on experience

Odds are, this is not the first time the issue has come up – no need to reinvent the wheel!

Sources of Knowledge

See CSURMA.org for the latest version

California State University Risk Management Authority

Part 2
Cyber Coverage

Agreements Involving Technology Risks: Cyber Insurance Requirements for Consultants and Vendors

Alliant

Part 2: Presentation Outline

- Nature of Cyber Risks
- Insurance Coverages for Cyber Risks
- Risk Management Considerations for Agreements Involving Technology Services and Products
- Sample Insurance Requirements

Nature of Cyber Risks

- "Cyber" has become insurance industry shorthand for a variety of information technology risks, including but not limited to:
  - Hardware
  - Software
  - IT Consulting
  - Cloud Services
  - Data Processing
- Rapidly Changing Market – no set ISO forms

Types of Cybercrimes/Losses

AT A GLANCE

Incident Response Trends

Top 5 Causes

1. **38%** Phishing
2. **32%** Network Intrusion
3. **12%** Inadvertent Disclosure
4. **8%** Stolen/Lost Device or Records
5. **5%** System Misconfiguration

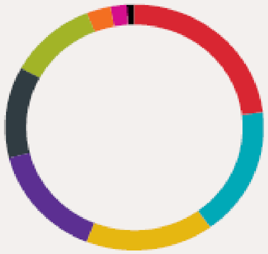
What Happens Next After Phishing

31% Office 365 Account Takeover	**8%** Wire Transfer
24% Ransomware	**7%** Theft of Data
13% Installation of Malware	**1%** Cryptomining
13% Network Intrusion	**1%** Espionage

Incident Response Timeline (median)

12 Days	3 Days	34 Days	38 Days
Occurrence to Discovery	Discovery to Containment	Time to Complete Forensic Investigation	Discovery to Notification

Industries Affected



23% Healthcare (including Biotech & Pharma)	**15%** Education	**3%** Government
17% Business & Professional Services (including Engineering & Transportation)	**12%** Retail, Restaurant & Hospitality (including Media & Entertainment)	**2%** Nonprofit
16% Finance & Insurance	**11%** Manufacturing	**1%** Energy

Entity Size by Revenue

> $5B	7%
$1B–$5B	23%
$501M–$1B	11%
$101M–$500M	21%
$10M–$100M	27%
$1M–$10M	10%

Average Forensic Investigation Costs

$58,034 All Incidents

$65,227 Average Network Intrusion

$350,576 Average of 20 Largest Network Intrusions Investigations

Incidents Involving International Reporting

25%

Encryption Key Received and Data Restored After Ransom Paid

96%

Notifications vs. Lawsuits Filed

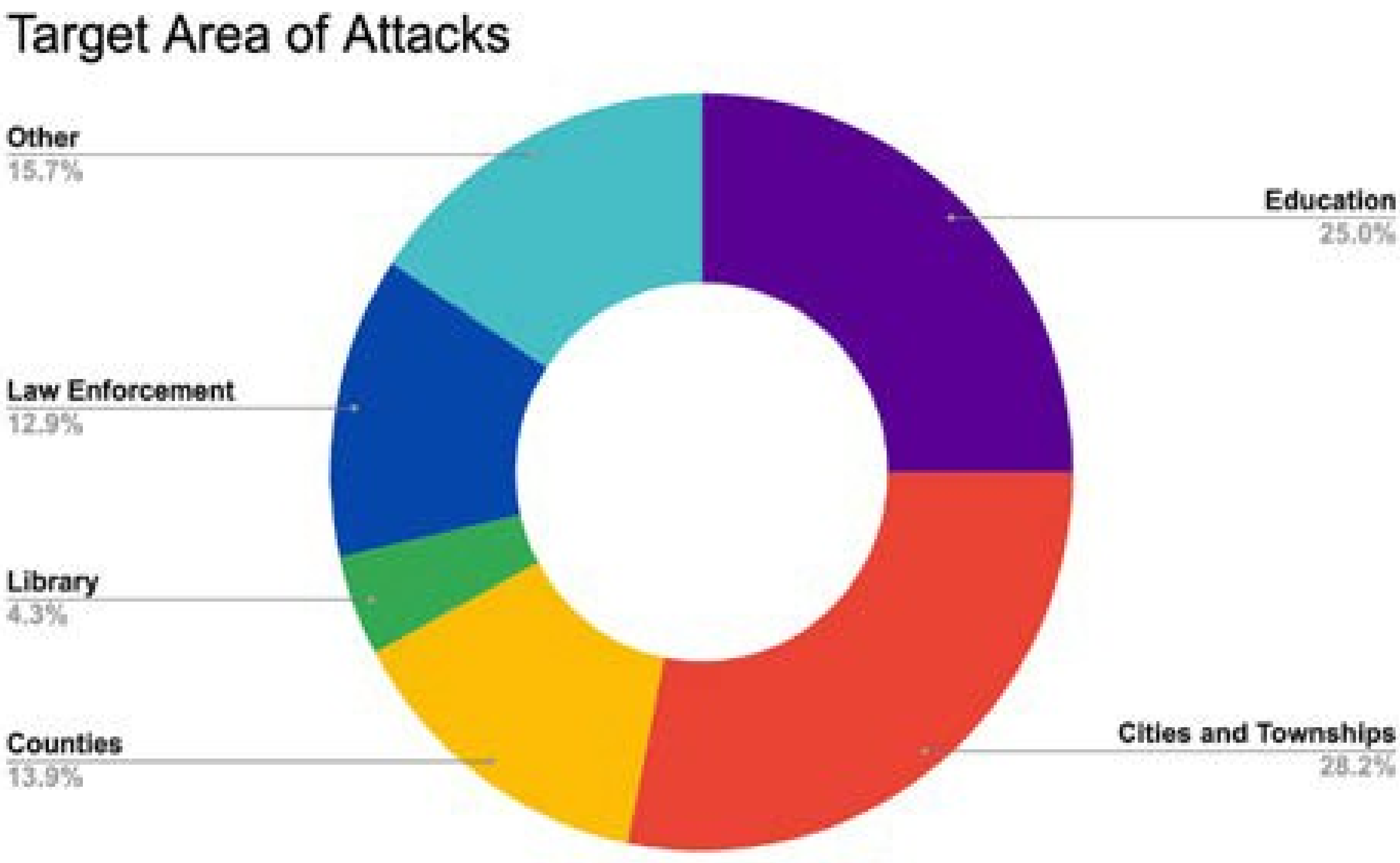
438 Notifications

14 Lawsuits Filed

Regulatory Inquiries Following Notification

40%

Cyber Attacks on Public Entities



WHITEPAPER: The Economic Impact of Cyber Attacks on Municipalities

The Ransomware Epidemic

	Public Entity A	Public Entity B	Public Entity C	Public Entity D
What Happened	A single lost unencrypted laptop	Ransomware attack	Ransomware attack. Core clinical server, pharmacy, lab, electronic records all breached. Hospital system admins were able to quickly shut the systems down and restored most everything because of well-kept backups.	Ransomware attack. Minor incident. No ransom paid
Coverage Parts Affected	100% Breach Response	Breach response as well as 3rd party claim for data network liability	Breach response as well as BI claim	Data Restoration Costs
Size of Claim	$383k Total $319k for doc review $50k for legal $14k notification costs 9k notified lives	$400k Total in breach response $300k for computer forensics $100k legal ??? For third party claim	$45k Total for breach response $20k legal $25k forensics $5M proof of loss submitted for BI	Did not breach retention
Lessons Learned	Make sure all workstations and mobile equipment are encrypted	Forensics revealed that no health data was breached so no notifications were required and the insured is facing a 3rd party class action suit regardless. Lesson is that healthcare faces the threat of a class action suit even if data is not breached.	Currently under review. Patient data was encrypted and wasn't accessed. 46 hospital employees had information accessed. Insureds want their money quickly after a claim but the larger and more complicated the claim is, the longer it will take.	If concerned with retention, a retention buy-down is available

Quiz: What are some of the things you should do or keep in mind when viewing emails?

1. Double-click the sender’s email
2. Keep an eye out for the “External Sender” text
3. Open attachments and click links immediately
4. Be aware if the email seems to be unexpected or out of place

Insurance Coverages

- CGL Insurance Policies providing bodily injury, personal Injury and property damage coverages don't directly address the combination of first and third party cyber exposures. New Coverage forms:
  - Cyber Insurance Policy
  - Professional Liability for Technology Firms
  - Products Liability
  - SCADA Systems

Evolving Forms & Case Law

- Information Security & Privacy Liability
- Cyber Extortion Liability
- First Party Data Asset Liability
- First Party Network Business Interruption
- Website Media Liability
- Regulatory Defense & Penalties

Cyber Coverages

Breach Response

- Legal Services
- Forensics
- Notification
- Credit Monitoring
- Public Relations/Crisis Management

First-Party

- Business Interruption
- Cyber Extortion
- Data Restoration
- eCrime
- Bricking
- Cyrptojacking
- Reputation Loss
- Criminal Reward

Third-Party

- Data and Network Liability
- Regulatory
- Payment Card
- Media Liability

Other Coverages / Placements

- Breach Response*
- Technology E&O
- Retention Buy Down
- Excess Placements

Information Security & Privacy Liability

Coverage	• Violations of privacy law through failures of computer or network security
Costs Associated	• Notification, legal services (privacy counsel), computer expert services, call center services, credit monitoring, ID monitoring, public relations, and crisis management
Claim Example	• Somebody hacks into your network system, then locates and takes sensitive protected information

Cyber Extortion Liability

Coverage	• Extortion threats by persons other than employees, managers, etc. • Ransomware and denial of service attacks
Costs Associated	• Contracting with vendors to deal with the extortionist if time permits, paying the extortion amount if data cannot be retrieved, computer forensics for finding out what went wrong
Claim Example	• Somebody hacks into your network, gains access to you data/system and holds your data hostage until you agree to pay them

First Party Data Asset Liability

Coverage	• Data protection loss as a result of a security breach that results in the alteration, corruption destruction, deletion, or damage to a covered data asset
Costs Associated	• Costs to recover, reinstate and recreate intangible assets that have been destroyed, forensic auditors and investigators, loss adjusters
Claim Example	• The extortionist does not get paid in time, you lose your data, and now you need to pay computer experts to either figure out how to get it back or recreate what you have lost.

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First Party Network Business Interruption

Coverage	• Covers income loss and extra expense from the necessary interruption or suspension of computer systems
Costs Associated	• Business income loss and extra expenses
Claim Example	• Payroll system gets hacked and wiped, entity has to provide payment by other means such as manually creating pay stubs and/or paying in cash, or providing cash advances until the system is restored

Website Media Liability

Coverage	• Releases of media content displayed on websites or social media sites – includes cases involving libel, defamation, slander, interference with publicity, copyright, trademark infringement
Costs Associated	• Costs to contract legal services or computer experts to determine the extent of a potential exposure on your website
Claim Example	• An employee posts a flyer on your website 7that includes copyrighted photos.

Regulatory Defense and Penalty

Coverage	• A release of PII triggers certain regulatory response such as under HIPAA or Payment Card Industry (PCI) standards
Costs Associated	• Costs to contract legal services and resulting fines and penalties
Claim Example	• A hacker gains access and downloads data related to workers' compensation claim records that include medical treatment information.

Professional Liability – AKA Technology E&O

Professional Liability covers liability for errors and omissions

- Require for consultants
- Can be used by software vendors to cover cyber risks
- There is no additional insured status
  - Vendor's professional capabilities are underwritten and the contracting public entity is the third party beneficiary of the coverage
- Claims-Made Coverage

Products Liability

CGL Insurance Policies are designed to provide cover for bodily injury and property damage caused by products

- CGL can work for hardware products
  - But not well for contingent risks from product failure
- CGL is not designed for software product failure

Quiz: Which are more secure ways to share information?

1. Sending the information through email without encryption
2. Using the CSU Data Transfer Service (MOVEit)
3. Using SharePoint or OneDrive
4. Share the information in person

SCADA Systems (Supervisory Control and Data Acquisition Systems)

SCADA Systems are pervasive in public entities:

- Traffic, Transit and Airport Information sys.
- Automated systems for water and wastewater
- Electrical generation and distribution
- Emergency Response Systems
- Building Operation Systems

Insurance Products have to be tailored to the risks and exposures

Risk Management Considerations

- Plan for divorce – no agreement is forever
  - Who owns the data, how is it delivered at end?
  - Who owns IP for custom developed systems?
- Require Compliance with Applicable Laws
- Require Compliance with Safeguard Standards and an Information Security Plan
- Require Timely Notification of Non-compliance or a Suspected/actual Breach
- Require Cooperation in Response

Indemnity Agreement

- Type 1 (strict) indemnity is preferred and should be the base part of the agreement
- Supplemental terms for information technology may include an indemnity clause that specifically supplements (not replace) the Type 1 with details on indemnified costs such as
  - Notifications, call centers, identity restoration, credit monitoring, fines, penalties, judgements, your entity's internal costs to respond, etc.

Involve your organization's legal counsel!

Insurance Requirements

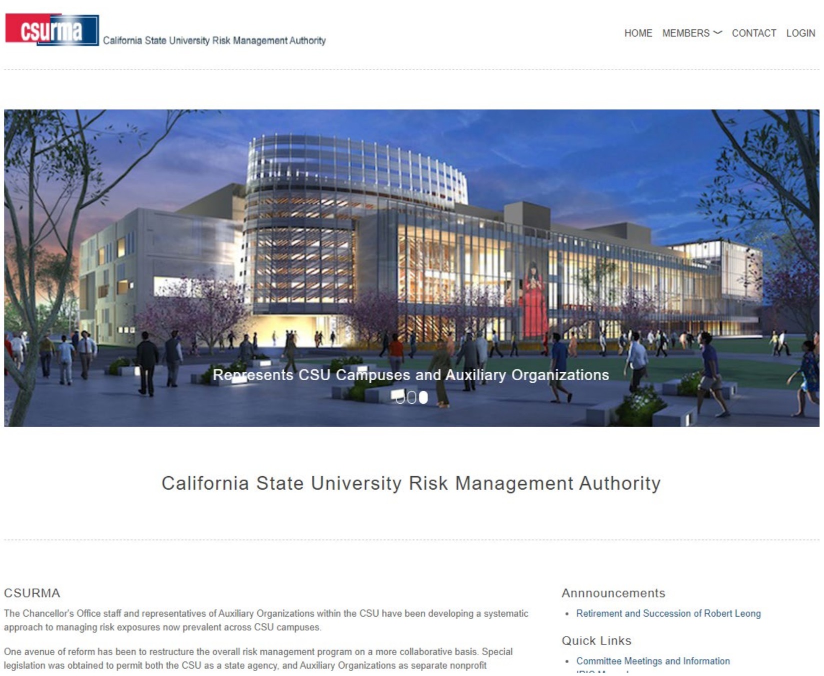
- Chapter 4 of IRIC Manual
  - Exhibit 7 for IT Agreements involving Professional Services
  - Exhibit 8 for IT Agreements involving Vendors
- The base insurance requirements are the same
  - CGL, CA, WC, AI Status, Waiver of Subro, Primary
- Note claims-made cover for professional and cyber policy forms

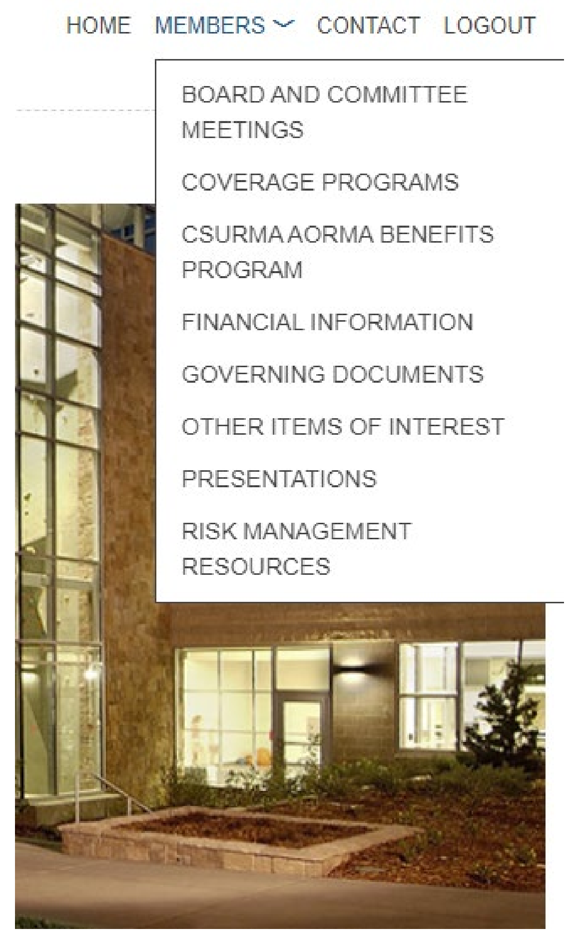
Conclusion

- So called "Cyber Risks" don't fit neatly into traditional insurance programs
- If a Standard Agreement is being used, an appendix specific to data and security should be added
- Require Professional Liability or Cyber Liability **in addition** to traditional covers
- There are no standard forms and change is rapid in these coverages and pricing
- The law and policy interpretation is evolving

CSURMA Website

1. Log into the CSURMA website – www.CSURMA.org
2. Enter Username, Password
3. Click Login





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Thank You!

This presentation and other resources can be downloaded at:

www.csurma.org