

CLM 2015 Atlanta Conference
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Maximizing Insurer Resources When Marketing New Business

The insurance industry has never been more competitive. Companies seeking to profitably insure customers for environmental risks need to be more creative and utilize all of their resources when writing new endorsements and marketing new business. However, writing new environmental policies can be risky and lead to potentially large losses down the road. This panel of three speakers will offer advice on how a brokers, underwriters, claims professionals and outside defense counsel can collaborate using their unique perspectives and experiences at the front end to tailor solutions for prospective or current customers, instead of following the more traditional approach of writing a policy, adjusting a claim and then assigning counsel.

I. Roles/Perspectives

Broker

Insurance brokers help companies evaluate risk and find insurance coverage to mitigate that risk. They are uniquely positioned to understand a company's business and goals as well as the insurance products on the market that align with those goals. Importantly, insurance brokers also know and understand when there is a gap in the market and where a company could be exposed. The insurance broker on the panel will discuss her approach when consulting with a client, evaluating the client's business, reviewing the insurance market and approaching insurance carriers and reviewing their insurance policies. This review of the role insurance brokers typically play in the process will set the stage for the later discussion on how the insurance broker can use this process and perspective to create new insurance products and help solve company's problems.

Underwriter

Insurance underwriters work with brokers to determine the type of risk and insurance coverage for which their clients are looking. They have the training and experience to understand insurance policy language and to determine if one of their company's policies meets the need the broker communicates. The insurance company representative on the panel will discuss her experiences in the process of working with brokers whose clients are looking to insure against environmental risks. As with the insurance broker's discussion, this review of the underwriter's role and the more traditional communication flow will be the basis upon which we review how that dynamic can be more collaborative on the front end when creating new insurance products.

Claims Professional

Insurance company individuals who specialize in evaluating and defending claims filed against a policy holder typically become involved in the process after a claim is filed. The insurance company representative on the panel will discuss the basic process from intake to resolution and will focus on how that experience generates a different understanding and knowledge about the company that the broker and underwriter may have. For example, the adjuster may work with a company's employees in the field and have a fuller understanding of the company's day-to-day operations and the risks the company is exposed to from those operations.

The moderator at this point in the presentation will begin asking questions that demonstrate how the claims professional could collaborate with the broker and underwriter prior to a claim being filed in an effort to help company's risk, how the policy should be written and priced.

Outside Counsel

Claims adjusters typically only hire outside counsel once a claim is filed. The attorney on the panel will discuss his perspective on how limited that role traditionally is and how it can expand. He will discuss his experience defending environmental matters and how the knowledge gained as an attorney could, when collaborating with the insurance broker, insurance underwriter and claims professional, benefit a company's risk analysis before a claim is filed. Outside counsel have specialized knowledge of different state and federal environmental laws and can offer the insight on what a company could expect in various jurisdictions if a claim is filed. Further, as with the claims professional's experience, outside counsel spend significant time with a company's employees that are responsible for operations.

II. Example: New Jersey Site Remediation Reform Act of 2009 (SRRA)

State and federal laws evolve constantly and companies must keep abreast of these changes when evaluating which risks to insure and which insurance products to choose. The speakers will review this law which the state claims will dramatically change the process used to conduct environmental investigations and cleanups. Specifically, the SRRA states that it provides sweeping changes to the way in which sites are remediated in New Jersey by establishing a program for the licensing of Licensed Site Remediation Professionals ("LSRPs") who will have responsibility for oversight of environmental investigation and cleanup.

One of the most important changes binds LSRPs to a strict code of ethics, violation of which could result in the assessment of penalties as well as suspension or revocation of their licenses. This is potentially a huge risk to LSRPs and their companies. When the SRRA went into law, no insurance company offered insurance policies to insure against violation of the SRRA which could be extremely costly.

An analytical discussion will take place about how the outside counsel, claims professional, underwriter and broker could collaborate on creating and marketing a policy to

LSRPs. The outside counsel will demonstrate how he would review, analyze and synthesize the new law and then how he would approach a broker contact with that information. The broker on the panel will then discuss how she would consider which of her clients conduct this type of business and might have exposure to risk from the new law. Once she identifies which clients should be updated, she will then discuss the process by which she would work with her underwriting contacts to determine if there are any policies in the insurance market that would help her clients mitigate those risks.

As noted above, since there were no insurance policies in this example, we will demonstrate how the attorney, broker, claims professional and underwriter could create the new policy insuring site remediation professionals practicing in New Jersey and explain how the unique roles and perspectives of each discussed earlier can effectively shape the new policy. We will then offer suggestions on how that group could identify new clients and market the new product even before a claim is ever filed.

III. Example: Department of Transportation Pipeline and Hazardous Materials Safety Administration's final rule for Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains

Derailments of trains carrying crude oil have been big news and have created real fear in the communities through which these trains pass. As part of the response to this public threat, the United States Department of Transportation issued a final rule for Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains on May 1, 2015. Similar to the SRRRA example, the panel discussion will begin with the outside counsel's review of the rule and its requirements. Specifically he will discuss the car safety standards. He will then discuss how plaintiff's in litigation involving derailment would use any deviations from the standards in court and how litigation would involve various experts. He will also walk through the intricacies of litigation involving a product that crosses state and country borders.

After outside counsel reviews the new legal development, the broker will walk through her process of evaluating her various clients involved in the production and transportation of crude oil to determine which, if any, are at risk to litigation. She will then discuss how she would approach those clients and discuss what she learned about this new law from the outside counsel. She will then discuss her method and process for searching for existing insurance coverage that would address the DOT's final rule.

The moderator will then explore with the broker what she would do, and recommends doing, if no coverage exists in the insurance market. At that point, the underwriter and claims professional will then address their experiences evaluating high risk claims and how they would collaborate with the broker in creating a new product or endorsement that would cover losses involving high-hazard flammable trains. The collaborative process includes fully examining the client's business, appetite for risk, drafting policy language and pricing the product so that all parties are comfortable with the amount of risk being taken.

IV. Bringing It All Together

The end of the presentation will include questions from the moderator to the audience. The goal is to demonstrate to audience members that their understanding of the traditional policy creating and marketing process should be challenged. Outside counsel and claims handlers typically sit on the sidelines in the hunt for new business opportunities but because of their experience in handling claims, knowledge of the law and actual litigation, they should be involved at the front end of the process.