



RISK REDUCTION AND LOSS AVOIDANCE

GROUP CHAIR



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When it comes to injury and illness prevention programs, our team is experienced with complex global risk challenges and realizes that one size certainly does not fit all. We are often asked to break down processes, construct mitigation action plans, and assist with implementation of loss prevention programs for clients from the United States, Europe and Asia. These risks may include everything from tangible product risk exposures to intangible reputational and intellectual property risks.

Most successful claim and loss prevention programs include a similar set of common-sense elements. These focus on finding all hazards and exposures facing a business and developing a plan for preventing and controlling risks. Management leadership and active employee participation are essential to ensuring that all exposure is identified and addressed.

PRODUCT LIABILITY EXPOSURE

Our approach to risk management for products is designed to assist manufacturers, retailers, importers, and others in the supply chain avoid the risk of costly litigation. We assist in understanding the complex federal and state regulations governing the manufacturing, sale, and distribution of products in a wide range of industries. This is accomplished in a number of ways, which include:

- Application of global product safety and performance;
- Developing essential policies and procedures that affect day-to-day business operations;
- Implementing document retention and destruction policies;
- Developing standards conducting legal risk exposures during product development;
- Evaluating and improving instruction manuals, warnings, warranties and advertising materials
- Tailored product liability prevention programs;
- Reviewing and developing risk transfer mechanisms such as additional insured coverage as

well as drafting enforceable provisions for contractual risk shifting (especially for foreign business partners);

- Evaluation of insurance programs.

REPUTATIONAL HARM AND INTANGIBLE LOSS

From reputation and computer system interruption to disruptions of outsourced functions, reputational risks impact profit. Our lawyers know that these risks fall outside of traditional exposures because the risk is not a tangible item. We have developed comprehensive risk strategies to protect the real value of reputation, computer networks and intellectual property as a driver of revenue production and investment value.

Often a cause of reputational loss is adverse media coverage affecting revenue or sales. Examples include: a data breach; the disgrace of a celebrity endorsing products; key person disgrace; business partner disgrace such as bad practice or criminal activity of a supplier; breach of fair labor laws and environmental damage; loss of certification or accreditation; product safety or quality failure; or other perils as agreed in advance with the underwriter. We review structure, risk shifting and the client's insurance program to ensure that these risk are mitigated.

INSURANCE SOLUTIONS

We solve complex insurance problems for businesses—be they litigation, transactional or regulatory. Our team has deep experience in coverage advice, litigation of “bet-the company” cases, policy formation and review, insurance program structure, fronting arrangements, captive programs, regulatory issues, and transactional aspects of insurance, such as mergers and/or portfolio transfers.

In any multi-party/multi-claim/multi-insurer loss the roadmap to who pays first and next is often anything but clear. Clarity requires early assessment of all policies, additional insured endorsements, and contractual documents. Often a resolution is complicated by self-insured retentions, deductibles or solvency of the insured. Our lawyers have written seminal authorities on these issues. More importantly, they have been in the trenches advising clients on the nuance of when to litigate and when to negotiate these issues. We understand that no one wants surprises from coverage effecting or increasing the value of underlying claims.

RISK TRANSFER ISSUES

Generally speaking, parties to a contract require some form of indemnification from each other. For example, a manufacturer may indemnify its distributor and supplier or vice-versa. In fact, most commercial contracts include risk-shifting provisions that require (1) one party to defend and indemnify the other for claims arising from the actions or inactions of the indemnitor, and (2) to add the indemnitee as an additional insured under the indemnitor's general liability policy. Although distinct, the obligations go hand in hand—in both cases, liability is shifted from the indemnitee to the indemnitor's insurer.

Of course, in this risk-shifting paradigm many additional issues arise. For example, what happens when one party to the contract becomes insolvent? Additionally, what are the implications to the parties when the indemnitor has chosen to have in place a significant self-insured retention or deductible? What are an insurer's responsibilities to respond and protect insureds?

Our team has decades of experience advising our clients on mitigating these risks.

BUSINESS INTERRUPTION AND SUPPLY CHAIN DISRUPTION

With the evolution of technology, society has seen a drastic change in the movement of goods and resources between countries. It is against this backdrop that our experience has developed

for assessing risks and insurance products related to business interruptions, including those related to supply chain for components and commodities.

Traditionally, companies have attempted to lower their risk or exposure of supply chain interruptions by procuring Business Interruption coverage or Contingent Business Interruption coverage (CBI). Business Interruption (BI) coverage is generally contingent upon actual physical damage to the commodity or cargo. CBI provides similar coverage to the extent the loss is caused by a covered peril. In light of the emerging global supply chain system, there is clearly a market for transferring the risk of financial losses that result from an interruption of the supply chain that do not result from physical loss. As a result, carriers have begun underwriting Trade Disruption coverage. Typically, Trade Disruption Insurance (TDI) provides coverage for economic damages that result from a disruption of the global supply chain. Having counsel that understands the interplay between BI, CBI and TDI is key to properly assessing vulnerability to an interruption in the global supply system and, in turn, properly transferring risk.

INTELLECTUAL PROPERTY PROTECTION

Today, intellectual property is often an organization's greatest asset and includes inventions protected by patents, copyrights in works of authorship, trademarks that distinguish the source of goods and services, and trade secrets that provide an enterprise with a competitive edge. We have vast experience with trademark and advertising issues. We have keen understanding advertising offenses, such as unfair competition; copyright infringement; misappropriation of advertising ideas or style of doing business; and, Lanham Act claims. From securing patents, trademarks, and copyrights to IP licensing, we offer comprehensive advice on developing and protecting IP assets. When faced with intellectual property disputes, our lawyers provide a business-focused approach to develop a sound strategy to ensure IP assets are protected.

NON-COMPETE, EMPLOYMENT AND TRADE SECRETS

Our lawyers assist employers in protecting their intellectual property, human capital, and important client relationships. We provide advice and counsel concerning the many factors associated with hiring and firing employees who possess confidential information or otherwise have restrictive covenants. We routinely prepare confidentiality, non-compete, non-solicit, pre-invention assignment, and equity-based compensation arrangements, along with policy manuals on information, ownership, and protection. With respect to litigation, we have experience in pursuing and opposing applications for injunctive relief.

Representing management, in union and non-union settings, our lawyers serve large international corporations, medium and small businesses, startups, entrepreneurs, not-for-profit corporations, and public sector entities. On a day-to-day basis, we provide guidance to human resource and business unit managers on the many different laws encompassing employees' rights. Our goals are to help our clients create and maintain a positive human relations environment in their workplace through employee engagement and to support them in anticipating and preventing employment problems, as well as assisting them to resolve current issues.

EMPLOYMENT, HIRING AND RETENTION PRACTICES

Employers must be scrupulous in not appearing to discriminate in hiring and firing decisions. We guide companies in developing hiring and retention procedures that are fair and reasonable. We aggressively represent clients on complaints related to hiring and retention practices before the Equal Employment Opportunity Commission (EEOC) and its state equivalent.

WORKPLACE INJURY

Employers who implement injury and illness prevention programs scale and adapt key elements to meet the needs of their organizations, depending on size, industry sector or complexity of operations. The basic elements of a successful program include: management leadership; worker participation; hazard identification and assessment; hazard prevention and control; education and training; and, program evaluation and improvement. Our lawyers realize that each element is important in ensuring the success of the overall program.

LITIGATION AVOIDANCE AND ALTERNATIVE DISPUTE RESOLUTION

Future litigation is often not front-of-mind of when entering into agreements with suppliers and business partners. However, the costs associated with litigation, forum selection, and choice of law, awards of fees, etc. can be managed prospectively. We apply processes geared favorably toward particular client needs. Our lawyers have designed and implemented client-training programs on a variety of ADR topics at introductory and advanced levels. We are actively involved in ADR organizations, and our lawyers include arbitrators certified by those organizations. We apply a broad spectrum of dispute resolution techniques including binding and non-binding, sponsored and non-sponsored arbitration; summary jury trials; structured mediation; and, early neutral evaluation.

POLITICAL RISK

Political risk claims are, by their nature, complex, requiring detailed assessment and a thorough understanding of the insured's dealings with the foreign government. A client involved in international business runs the risk of foreign government action impact supply chain, overseas operations, etc. Any lawyer involved in such matters must understand that cooperation from the insured goes a long way to helping claim assessment and resolution.

Our political risk assessment team works closely with our Commercial and Corporate Practice Group, as well as our commercial and reinsurance arbitration teams. Our transactional knowledge, combined with breadth of our experience in insurance matters, empowers our clients to mitigate exposure to political risk.