Volume V, Issue 3: Q3 2013

EXECUTIVE ANNOUNCEMENTS

GRAHAM ADVISOR

REGULATORY UPDATE: Graham Organizes Construction Clients and Associations to Fight the Patton Case

In Pennsylvania, general contractors who contract directly with an owner and utilize a subcontractor have an obligation to pay workers compensation benefits to a subcontractor's injured employee in the event that the subcontractor fails to maintain workers compensation insurance coverage. That contingent workers compensation obligation has always been coupled with a benefit - that those injured subcontractor employees cannot sue the general contractor for their injuries (even if the general contractor does not actually pay the workers compensation benefits to the injured subcontractor employee).

That immunity defense is called the "statutory employer" defense. Because of a recent Pennsylvania Superior Court decision (Patton v. Worthington Associates, Inc.,) that defense is now effectively eliminated. The Court modified a long-standing five part test to determine whether the statutory employer defense is available to a general contractor, and that modification makes the defense almost impossible to obtain.

This issue is important to The Graham Company because as insurance carriers increasingly pay out on more statutory employer claims, this cost will be passed onto our clients. The Patton case is on appeal to the Pennsylvania Supreme Court, and The Graham Company has organized and filed a "Friend of the Court" brief to reinstate this important defense. Twenty-two contractor clients and eight associations have joined in The Graham Company's efforts to overturn this case.

For more information on how this may affect your business, contact Pete Prinsen at pprinsen@grahamco.com or call 215.701.5284.

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THE GRAHAM COMPANY®
INSURANCE BROKERS AND CONSULTANTS

NOTES FROM THE PLAYBOOK

Our culture at The Graham Company is unique; the energy here is infectious, and our employees have always adopted our firm's do-it-right-culture. From our commitment to providing best-in-class technical education, to celebrating employees' personal milestones, some may say we are more like a family than a firm. I think they're right, and I think it's mission critical to our ability to serve you.

Our commitment to our employees' personal happiness and professional development has allowed us to build a passionate workforce that wants to advocate your interests above their own. That's no easy task, and so I am humbled by the wealth of recognition The Graham Company has recently received.

Just last month we ranked #66 on *Business Insurance* magazine's annual list of top national brokers. We also received regional recognition, ranking #5 on *Philadelphia Business Journal's* inaugural list of top P&C insurance brokerages. Ranking alongside respected brokerages is rewarding, but even more so is the recognition we have continuously received as a best place to work (in Philadelphia and Pennsylvania). This proves that our people enjoy their careers, and we know that can only benefit your business.

Best Regards,

MICHAEL J. MITCHELL
CPA, CPCU
Vice Chairman

PROTECTING THE MISSION:
Steps to Becoming a Risk-Savvy Non-Profit

Some of society's most important work is performed by non-profit organizations. During these difficult economic times, the work of non-profits has never been more needed. The stakes are high, and most non-profits cannot afford a surprise occurrence that could put their organization's ability to fulfill their mission in jeopardy. It's critical that non-profits take proactive steps to reduce the likelihood or severity of risks that can threaten their mission.

Non-profits need to understand their exposures and take thoughtful, planned steps to mitigate risks. When non-profits don't have a plan in place or have a gap in their insurance coverage, they open themselves up to unplanned financial burden that can prevent them from fulfilling their mission. Successful non-profit leaders know that they need to focus on addressing risks as a key step in fulfilling their mission. For non-profits, reputation is everything. It makes sense then that a non-profit leader should focus on dangers that could negatively impact the organization's reputation. When good risk management practices are executed, a non-profit appears credible and stable in the eyes of stakeholders, making the experience of raising capital simpler.

What does it look like when a non-profit has its risk management processes in order? It looks like a well-run for-profit business. For The Philadelphia Zoo, it involves working with The Graham Company. "As you can imagine, a non-profit is exposed to considerable risk when it welcomes more than 1.2 million visitors per year on its premises that nearly 1,500 wild animals call home," said Joseph T. Steuer, Chief Financial Officer at The Philadelphia Zoo. The Graham Company has helped the Zoo manage its risks by following four basic steps.

STEP 1: IDENTIFY LOSS EXPOSURES

Identifying risks and exposures is where it all starts. There are hundreds of exposures inherent in any business, including but not limited to property, business interruption, auto, personal injury and cyber losses. Some of them can be transferred through a well-thought-out insurance program. Others can be better addressed through operational changes.

The Graham Company identified areas for potential losses for The Philadelphia Zoo, including the weather, volunteers, outside contractors,

CONTINUED ON INSIDE

ASK THE EXPERT

Tim Folk on Limiting Financial Exposure When Mother Nature Strikes

Q. Where do I begin my disaster plan?

A. The elements of a well-defined plan will address the following elements and considerations related to an evacuation situation: food; medication; offsite shelter arrangements; transportation for both ambulatory and non-ambulatory residents; patient identification system; communication tools for the recovery team; a communication plan for contacting patients' family; staffing pool and accommodations; and a command center for the recovery operations. These are just a few examples of the many considerations in preparing for a disaster. A complete plan would also include shelter-in-place protocol and the responsibilities of each team member on the disaster recovery team.

Q. How will my sublimits and policy exclusions impact my recovery?

A. A sublimit places a maximum on the amount available to pay that type of loss. For example, under a commercial property policy with a $200 million blanket limit applicable to loss from all other causes, there may be a $100,000 sublimit on coverage for loss from flood and a debris removal sublimit of 25 percent of the direct damage loss amount. It is critical that you understand what the sublimit is for evacuation response expenses, business interruption and remediation. Also, know what officially triggers the evacuation – depending on policy structure, sublimits may only apply at the insured's discretion (i.e., evacuation when safety of patients is at risk) or the discretion of an official governing body (i.e., the state, the county, the national weather service). Also, be aware of what your policy excludes – and the breadth of those exclusions. A flood exclusion is much less broad than a "water" exclusion and can change recovery by dramatic amounts.

To learn more about maximizing coverage before a disaster strikes, contact Timothy E.J. Folk, Vice President and Producer at The Graham Company, at tfolk@grahamco.com or 215.701.5231. Or read a more detailed article at grahamco.com/knowledge_center.html.

GRAHAM SIGHTINGS

Experts in the News

Tim Folk & Chris Keith on disaster planning and recovery for long-term care facilities
Long-Term Living News online, April Issue

Bill Graham on Demolition Safety
CBS 3's Walt Hunter, June 18 & 20

Bill Selman on environmental risk for petroleum retailers
CSP magazine, August issue

Regional and National Rankings

Philadelphia Business Journal's list of Top 25 Brokers ranked The Graham Company as one of the top five brokers in the Philadelphia region.

Business Insurance's list of The Top 100 Property and Casualty Agencies ranked The Graham Company #66.

Graham Gives Back

The Graham Company's Charitable Giving committee hosted an Alex's Lemonade Stand outside the company's Center City office June 8 during the Foundation's annual Lemonade Days. The Graham Company raised over $1,500 for childhood cancer research.

Get to Know Us

The Graham Company's website now features profiles on our advisors and experts. Visit grahamco.com.

BENEFITS BRIEF

Employer Mandate Penalties Delayed Until 2015

The Obama Administration has postponed the Affordable Care Act (ACA) employer mandate penalties previously set to go into effect in January 2014 until January 2015. The ACA requires companies with 50 or more full-time employees to offer affordable healthcare or pay a penalty. The Department of the Treasury announced the delay, along with a similar delay for information reporting by employers, health insurance issuers and self-funded plan sponsors. The delay does not affect any other provision of the ACA, including individuals' access to premium tax credits for coverage through an Exchange.

According to the Treasury, the delay of the employer mandate was necessary because of issues related to the reporting requirement. The Administration's decision is based on concerns voiced by businesses about the complexity of the requirements and the need for more time to implement them effectively. The additional year will give employers time to understand the rules, to make decisions about providing health coverage and to adapt their reporting systems, without worrying about potentially significant penalties. The administration plans to use the additional implementation time to consider ways to simplify the new reporting requirements and to publish proposed rules implementing these provisions later this summer.

The Graham Company is here to help you get a handle on the Affordable Care Act. Contact Joe McGinty, Vice President - Employee Benefits Consulting, at jmcginty@grahamco.com or 215.701.5292.

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construction work, hiring practices and claims management. The firm also evaluated the effectiveness of the Zoo's existing insurance programs. For any non-profit, this may involve determining which exposures have been transferred to their insurance company and which exposures are self-insured or uninsured. It's important for non-profits to make sure that they fully understand how insurance policies react to different loss scenarios.

Upon examination of The Philadelphia Zoo's existing insurance policies, The Graham Company discovered that one of the Zoo's liabilities being covered under a separate insurance policy could be consolidated under the Zoo's general liability policy. This finding resulted in the Zoo being able to save hundreds of thousands of dollars.

STEP 2: DESIGN PROGRAM

After a non-profit identifies potential areas for loss, they should work with their broker to design insurance coverages and implement programs that avoid or reduce risks. This may include a safety and wellness program, a crisis or contingency plan, tight contractual requirements and well-thought-out hiring practices.

Designing and purchasing general liability, workers compensation and other types of insurance should be considered during this step. The right broker will work closely with the non-profit to determine whether they should consider higher deductibles, self-insurance or captive alternatives. A broker can help them strike the right balance between how much insurance the organization can afford and how much risk the non-profit can assume on its own.

One of the areas for potential loss that The Graham Company identified was the risk that inclement weather posed on the Zoo's financial viability. "The weather presents a huge threat to the Zoo's profitability," said Steuer. "This past June was one of the wettest in history, but we were protected from this unavoidable exposure." Initially, The Graham Company advised the Zoo to purchase rain insurance over four of the biggest holiday weekends, and since then the Zoo has expanded its weather risk management program to insure against non-optimal zoo days throughout the entire season.

STEP 3: IMPLEMENT PROGRAM

Good intentions and plans are not enough. The hard part is putting this all to work. Organizations need to review responsibilities and priorities and consider the impact new processes have at the highest and lowest levels of the organization. The non-profit should ask: What specific steps need to get done? When? By whom? What measurements will tell that our plan is having an impact? Senior management should make sure that someone in the organization clearly owns this process and that its importance is understood.

STEP 4: REVIEW, EVALUATE AND UPDATE PROGRAM

A non-profit's reason for existing is to fulfill its mission, but it won't stay around long enough to do that without taking a page from the for-profit world. Unfortunately, many non-profits attempt to manage exposures without measurements and reviews. While metrics will vary by operations, a routine quarterly review of claim activity and key performance data is critical to a risk management program's success.

In the case of The Philadelphia Zoo, The Graham Company has helped reduce the non-profit's premiums by nearly 50 percent since 2004. The firm reviews their risk management program on a regular basis and makes adjustments as appropriate in order to continue to see these cost savings. This past year, the Zoo underwent a comprehensive risk management assessment, reviewing everything from walkways, to claims, to the newest exhibits and ended up rolling out, for example, a workplace safety training program.

A key to the non-profit's success has been ensuring management sets specific goals and takes steps to achieve its goals. Recently, management presented its strategic plan over the next 10 years to The Graham Company in an effort to give the firm a clear picture of where the non-profit is headed so they can advise appropriately. Steuer admits, managing and assessing the Zoo's risk management program isn't easy. But it's worth it – for the organization and for those it serves.

To learn more about managing your non-profit's risks contact Bob Scullin, ARM, Vice President of Sales at The Graham Company, at bscullin@grahamco.com or 215.701.5345.