



EXECUTIVE ANNOUNCEMENTS

Volume V, Issue 1: Q1 2013

GRAHAM ADVISOR

Bill Graham Receives Award for Distinguished Citizenship from Bucknell University



Bill Graham accepting the award

Bill Graham, Chairman and CEO of The Graham Company, was awarded the Bucknell Award for Distinguished Citizenship from his alma mater. Graham was honored at the University's Academic Year Celebration Dinner on Friday, October 26, 2012.

The Award is given annually to an alumnus or supporter who exemplifies the mission of the University's founders to educate students to serve the common good and to promote justice in ways sensitive to the moral and ethical dimensions of life. Graham was selected as this year's recipient of the award for his service as a trustee and his commitment to philanthropic initiatives at Bucknell as well as his leadership in the Philadelphia area.

Graham's Senior Safety Consultant Awarded 'Safety Professional of the Year'



Rich Ogle, Jeff Spatz and Mark Troxell

Jeffrey A. Spatz, CHST, Senior Safety Consultant, was named Safety Professional of the Year by the Mid-Atlantic Construction Safety Council (MACSC) at the Council's 15th Anniversary & Awards Dinner on November 3, 2012. The Award recognizes a leader in the safety community with credentials, exemplary character and proven success.

"Over the course of more than two decades in construction safety, Jeff has demonstrated his expertise, work ethic and genuine passion for worker safety and health," said Dennis Dougherty, president of MACSC.

COMMENTS FROM THE CEO

Since our inception 50 years ago, we have made it our mission to employ only the highest caliber of people. Against the norm of recruiting exclusively from within the insurance industry, we strongly believed that recruiting attorneys, engineers and accountants and then formally training them would help us cultivate the most outstanding insurance professionals.

Delivering on this mission goes beyond recruiting and initial training; it's also dependent upon the continued education of our entire professional team. In fact, we were the first brokerage firm in the country to develop a formal Technical Development Department dedicated solely to providing training, continuing education and quality assurance. This culture of career-long education has enabled us to be coverage experts. Rather than relying on multiple specialists to complete your program, which often means a lack of continuity, we leverage our Technical Development Department's expertise so that we can remain at the forefront of every trend and coverage.

Evidenced in this issue's article on Side "A" D&O Liability Coverage, this is exactly the caliber of "specialist" thinking that we bring to you without sacrificing program continuity. It's the best of both worlds to benefit your business.

We'd love to hear from you; contact us at feedback@grahamco.com.

Best Regards,

WILLIAM A. GRAHAM, IV
CPCU, CLU, CEO



George L. Lee III - VP Planning & Development; Director, Mary T. Lee - Vice Chairman & Corporate Secretary; Director, Robert P. Lee - Director; Jane T. Lee, Chairman of the Board; William S. Lee - President and CEO - Director

Why Purchase Side 'A' Directors & Officers Liability Coverage?

Our clients sometimes ask why they should purchase Side "A" Directors & Officers Liability coverage to protect their directors and officers from lawsuits when they are already providing broad indemnification for damages and defense through the corporate by-laws or an equivalent.

The simplest answer is that Directors & Officers Liability insurance is useful in order to attract and retain qualified board members. The Side "A" portion of the coverage is protection for directors, officers or members of a board of managers and other individuals in equivalent positions in situations when they are not indemnified by the organization.

It's for this reason that Red Devil, Inc., a construction and home repair product manufacturer and client of The Graham Company for more than 15 years, decided to purchase coverage for its officers. "Our officers put their assets at risk every day in making decisions to further the growth and success of our company," said George L. Lee, III, Vice President – Planning & Development. "Our outside directors, in particular, feel more secure when there is an

insurance policy in place. It ensures that they can concentrate on making the best decisions for the organization and not worry about their decisions coming back to haunt them after their tenure."

Indemnification of an organization's directors and officers is generally permissible in every state for most causes of action; however, it is generally only mandatory in a limited number of circumstances. Therefore, in most cases, the company has the option to indemnify or not to indemnify. Possibly even more important is whether or not the organization is permitted to or will advance money to the directors and officers to properly defend themselves against allegations, whether or not those allegations have merit. The cost to defend these claims is often more than the actual damages, if any.

Prudence would suggest then that an organization provide for broad indemnification provisions in its by-laws or equivalent, so as to attract and retain qualified board members. However, consider the following:

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ASK THE EXPERT



Joe McGinty on health care reform

Q. What health care reform mandates go into effect in 2013?

A. Employers must be aware of key mandates going into effect this year:

- Effective January 1, 2013, employees' pre-tax contributions to a Health Flexible Spending Account (FSA) must be limited to \$2,500.
- Insured and self-insured plans must provide a Summary of Benefits Coverage (SBC) of medical coverage to all eligible employees for open enrollment periods that began after September 23, 2012.
- Non-grandfathered health plans must cover specific preventative care services for women without cost-sharing requirements.
- Health insurers and self-funded plans must pay \$1 per covered employee per year to support the Patient Centered Research Institute.
- Employers must report to employees on Form W-2 the cost of their employer-provided group health plan coverage that was paid in 2012.
- A 0.9% increase in the Medicare tax rate for high-income individuals earning over \$200,000 annually took effect.
- As of March 1, 2013, employers must provide all new hires and current employees with a written notice about Exchanges.

Q. How can my organization prepare this year for the provisions that will go into effect in 2014?

A. In 2014, the "Pay or Play" mandate will go into effect. Essentially, employers will be required to offer qualified health coverage to all employees working 30 or more hours per week or pay a penalty. In 2013, employers should begin strategic planning to understand and address any potential employer penalties. To help you evaluate your options, The Graham Company invested in a Health Care Reform Pay or Play Calculator, a comprehensive modeling tool that can tell you if your organization's current coverage is considered affordable or if it provides minimum value and the amount of potential penalties that may be triggered. Using the tool, we can determine how much you could be required to pay in penalty taxes as well as model changes that may protect you from being assessed fines.

To learn more about how health care reform mandates will impact your business, contact Joe McGinty, Vice President - Employee Benefits Consulting, at The Graham Company, at jmcginty@grahamco.com or 215.701.5292.

GRAHAM SIGHTINGS

Experts in the News

Mike Mitchell and Kim Sharkey on workers compensation
CFMA Building Profits, January/ February Issue



Chris Keith on alternative risk financing
Advance for Long-Term Care Management



Kevin Connelly and client First Montgomery Group on benefits of a master policy
National Apartment Association, January



MARK YOUR CALENDARS

Claims Workshop: A New Era for Workers Compensation
April 18, 2013, at 8:30 am
The Graham Company

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From Company updates and breaking industry news to insurance trends, follow us @TheGrahamCo and we'll deliver daily insight to keep your employees safe and your business thriving.

CLAIMS CORNER

Lessons Learned from Superstorm Sandy

In October 2012, Superstorm Sandy hit the East Coast, devastating New Jersey. A few weeks later when recovery workers were making headway, the area was hit by a nor'easter with a foot of snow. Recent weather events showed us the worst-case scenario does happen, and that the next disaster could happen to you.

KEY LESSONS FOR BUSINESSES

- ① The truth is, when disaster strikes, your first priority won't be your business. It will be making sure your family and employees are safe. Having a disaster recovery plan in place removes the guesswork so you can focus on what is most important.
- ② Create a disaster recovery team that includes an insurance broker who will be responsible for knowing the ins and outs of your policies, reporting claims and advocating throughout the claim and restoration period on your behalf.
- ③ Identify a spokesperson to speak on behalf of the company. When disaster strikes, your employees, clients and business partners will be looking for a leader to inform them of vital information.
- ④ Create a list of preapproved emergency vendors to handle the aftermath of flooding, fire, power interruption, etc.
- ⑤ Prepare for situations in which employees will not be able to return to work for an extended period of time. If possible, establish remote access to company computer systems.
- ⑥ Establish a plan for communicating with employees and customers in the event you lose power.

The Graham Company's Claims Services Department has resources to help you create a Disaster Recovery Plan; contact Dawn A. Hought, CPCU, AIC, ARM, Vice President - Claims, at dhought@grahamco.com or 215.701.5307.

SIDE 'A' DIRECTORS & OFFICERS LIABILITY COVERAGE CONTINUED

1. Organizations generally may not indemnify their directors and officers when security holders or shareholders of the company sue the directors and officers on the organization's behalf.
2. If the organization refuses to advance defense costs to a director or officer, the insurance policy can generally be written to provide those defense costs to the insured person to avoid the personal expense. The insurance carrier will seek reimbursement from the organization, if warranted.
3. Organizations cannot indemnify their directors and officers if there are no corporate assets (i.e., the organization is in bankruptcy proceedings).
4. Finally, present board members cannot assume the by-laws that exist today will remain in place after their tenure. It is not unheard of for broad indemnification provisions to be removed from the current by-laws (those in place at the time of the claim) with respect to certain former directors who might have fallen out of favor.

EXCESS/DIC SIDE 'A' COVERAGE

In addition to buying Side "A" coverage, organizations should also consider the purchase of Excess/DIC Side "A" coverage through a separate insurance policy to provide extra protection for the directors and officers only. It will provide additional limits in excess of the underlying Directors & Officers Liability Side "A" coverage and will provide additional benefits in those instances when the organization is financially or legally unable to, or otherwise fails or refuses to indemnify them, provided, however, that the insurance carrier will have the right to subrogate against the organization if they have wrongfully failed or refused to indemnify.

In addition, where organizations are covered under the policy, bankruptcy courts have in some situations seized the Directors & Officers Liability policy as an asset of the bankruptcy estate, leaving the directors, officers or members without coverage. Therefore, one benefit of the Excess/DIC Side "A" coverage is that it provides separate limits that apply only for the directors and officers, not the organization.

Another benefit is that these policies are written with very few exclusions and provide coverage on a primary basis where the coverage is broader than the underlying primary Directors & Officers Liability policy. For instance, the policy does not typically have an Insured v. Insured exclusion (or this exclusion might be limited to an Entity v. Insured exclusion). If there is concern about one director being sued by fellow board members with regard to

the management of the company, certain Excess/DIC Side "A" policies can be purchased to provide protection for that director in the event the organization does not indemnify them. These suits are usually excluded in a primary Directors & Officers Liability policy.

There are a few other key advantages to the purchase of an Excess/DIC Side "A" policy:

1. Difference in Conditions (DIC) Coverage for situations where the underlying Directors & Officers Liability carrier wrongfully refuses to indemnify the directors, officers or members;
2. Drop-Down Coverage for situations where the underlying Directors & Officers Liability carrier is able to rescind the underlying policy; and
3. Drop-Down Coverage in the event the underlying carrier becomes insolvent.

A few years ago Red Devil, Inc. was wrongfully accused of violating a law. Since it was impossible to prove any damages, the cost to defend the claim was not covered under General Liability insurance. The Directors & Officers policy actually covered the claim because the policy was written to include coverage for lawsuits brought directly against the organization (Side "C" coverage). "This is a major benefit of this type of coverage. This was an instance we never saw coming, and this coverage assured that our business was protected," said Lee. "We can sleep at night knowing that if an allegation was ever made against one of our directors

or officers they would be financially protected, too."

BENCHMARKS

According to the most recent Towers Watson Directors & Officers Liability Survey, Side "A" Directors & Officers Liability coverage is the most widely purchased component of a Directors & Officers Liability policy by an organization. Of its 401 survey respondents (public, private and nonprofit), 86% purchased Side "A" coverage, either on its own or in addition to either Side "B" (coverage for the organization's indemnification of its directors, officers or members) or Side "B" and Side "C" (coverage for suits brought directly against the organization); 57% purchased Excess Side "A" or Side "A" DIC policies. The vast majority of organizations cited the breadth of the coverage under the Excess/DIC Side "A" policies as their main reason for making that purchase.

To discuss Directors & Officers Liability, please contact Senior Technical Specialist Jeanne Oronzio Wermuth, CPCU, CIC, ARM, at joronzio@grahamco.com or 215.701.5409.

