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Periculum Services Group

Risk Management of Business Partners

Collecting on Indemnity Obligations from Business Partners to Protect Your Bottom Line

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The Ingredients

Creating a tasty dish requires a well-thought and creative combination of ingredients, careful execution of the recipe for blending and cooking the ingredients, and an appreciation for the finer details and presentation of the final product. All-Star chefs not only have the ability to accomplish this for any given meal, but they have the ability to oversee people and processes to ensure success meal after meal after delicious meal.

Now that you're mouth is watering, allow me to pull you back to the main topic which many people would consider decidedly bland: risk management of your business partners. It's a tremendous task to manage all of the risk exposures that are inherent in your business. Now add to that the far-reaching task of managing the potential liability entanglements brought to the table by each of your business partners.

No business can operate in isolation. Every business must interact with contractors, vendors, licensees, tenants, suppliers, consultants, and on and on. Each one of the hundreds or thousands of these business partners are important to your success, but each also presents another potential liability exposure.

Prudent risk management demands a well-planned and executed recipe for protecting the bottom line from the myriad of liabilities that these business partners pose. There are a few key ingredients in this recipe, and the intent here is to explore the ingredients, and to discuss how they can be mixed and used to protect your bottom line.

Before I go any further, let me state that this paper was written for a broad audience ranging from individuals with little or no risk management background to the old pros. As such, "old pros" may consider some of the text to be quite basic. Be assured that there is no intent to condescend or insult anyone's intelligence, but rather to make understandable information available to a wide range of readers.

A Fundamental Risk Transfer. The basis of any relationship with a business partner is the contract terms that describe the rights and responsibilities of each party. These contract terms will cover numerous business issues including prices, delivery commitments, payment terms, and *liability issues* among many things.

One of the most effective and essential risk management techniques to protect your own organization's assets is to transfer some or all of the risk and liabilities posed by business partners back to these same business partners. After all, is this not where they belong? The contract between organizations is the starting point for what is commonly known as

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contractual risk transfer. But it is only a starting point. The recipe includes multiple ingredients:

- Indemnity obligations established by contract
- Contractual Liability insurance coverage
- Additional Insured endorsements
- Insurance Requirements established by contract
- Proof of Insurance coverage

Indemnity. Let's start with a basic definition of this common term.
Indemnity: An agreement to remunerate another for loss or protect him against liability.
Like many other aspects of a business relationship, the extent to which one party agrees to indemnify the other is a matter to be negotiated and addressed in a contract. Most attorneys have a good grasp of the indemnity concept and will usually include an indemnity provision in every contract that they draft.

But contractual indemnity provisions are not all alike. As you would expect, they typically favor the party whose attorney drafted the provision. And there can be multiple indemnity provisions in any given contract. Indemnity language must be carefully read to understand who is agreeing to indemnify who, and for what? Fundamentally, contractual indemnity provisions are broken into three categories: Broad, Intermediate and Limited. Let's briefly examine the characteristics of each by using a simple illustration. Assume that you are working for "ABC Retailers, Inc." and you are entering into a contract with "XYZ Suppliers, Inc." for products that you will sell in your stores.

Broad Indemnity: This type of indemnity provision specifies that "XYZ" would be obligated to *indemnify* "ABC" (your firm) for any liability losses caused by "XYZ's" sole negligence, "ABC's" sole negligence, or any combination of joint negligence by both firms. In other words, it doesn't matter who was negligent in causing the liability loss because "XYZ" is agreeing here in the indemnity provision of the contract to indemnify "ABC" completely. A broad indemnity's intent is to transfer the complete risk of loss associated with this business relationship from "ABC" to "XYZ." A great deal if you can get it. However, several states prohibit or restrict this type of indemnity provision. In fact, it is possible that a court could throw out such a provision leaving you with no indemnification whatsoever. Be sensitive to the jurisdiction where this type of indemnity might be challenged.

Intermediate Indemnity: This indemnity provision specifies that "XYZ" would indemnify "ABC" (your firm) for any liability losses caused by "XYZ's" sole negligence, or any combination of joint negligence by both firms, but *not* for "ABC's" sole negligence. In this case, if "XYZ" has any negligence, they must indemnify "ABC" but if "ABC" was solely responsible for the loss, there is no indemnity obligation. This leaves a slight "gray area" in the indemnity picture. As you can imagine, in all cases but those with clear-cut and obvious negligence, this leaves room for disputes between "ABC" and "XYZ." Attorneys for each will argue conflicting theories of negligence in an effort to negate or invoke the indemnity provision respectively. "XYZ" attorneys will argue that "it's all their [ABC's] fault" to keep the indemnity obligation from being triggered. Conversely, "ABC" will argue that "XYZ" was "at least a little bit negligent" in an effort to invoke the indemnity obligation. Given this potential for conflict, it is not unusual for this type of indemnity provision to establish that "XYZ" is responsible for providing legal defense until such time as a final determination of negligence is made.

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Limited Indemnity: This indemnity provision has limited usefulness as a risk transfer mechanism. It is alternately known as "comparative fault" meaning that "XYZ" would indemnify "ABC" only to the extent that "XYZ" is more negligent than "ABC" in the given situation. This type of indemnity is typically upheld and enforced by the courts, but it makes for messy legal fights over the degree of negligence. Furthermore, statutes in some jurisdictions would be more favorable to "ABC" in the absence of any contractual indemnity than this type of indemnity provision.

Indemnity Enforceability: The discussion of indemnity would not be complete without consideration of enforceability. Why go to all the trouble of crafting an airtight indemnity provision if judges later throw it out and leave you holding the bag? So it is advisable to be sensitive to enforceability and avoid being too greedy with your indemnity provisions. This is where reliance on legal professionals is paramount since statutes vary among jurisdictions.

Some jurisdictions prohibit any contractual transfer of sole negligence. In other words, "ABC" cannot require in their contract with "XYZ" that "XYZ" indemnify them for an incident that is caused solely by "ABC's" negligence. Even if "XYZ" is willing to accept this obligation as a condition of its business relationship with "ABC," some jurisdictions will not allow it.

There are also special limitations on certain types of contracts. For example, most states do not allow a broad form indemnity on construction contracts. You can readily see why it is important to have legal professionals involved in this process.

There are a few things to keep in mind in order to maximize the enforceability of your indemnity provisions. First and foremost, be sensitive to the jurisdiction's statutory quirks. Another thing you can do is to document contract formulation process to show that there was good faith negotiation. If it can be demonstrated that the indemnity provision was arrived it through genuine negotiation rather than being "rammed down one party's throat," it will be more likely to survive.

You might also considering breaking the indemnity provisions down. Separate indemnity provisions for different aspects of the business relationship or different activities under the contract. Keep insurance and defense provisions separate so that if one is provision is thrown out you don't lose everything.

Bonus tip! Although not necessarily part of the indemnity provision itself (see prior paragraph), be sure to establish control of defense and claim settlement. Negotiating a favorable indemnity provision is great, but you don't want to give up all control over the claim with it. If you are sued, for numerous reasons not the least of which is public relations and nuisance claims, you want to control your own defense and settlement process. You don't want your business partner's attorneys handling claims counter to your firm's philosophy and potentially setting you up for PR disasters or more nuisance claims in the future. Ideally, you and your attorneys handle the claim and your business partner just writes the check as required by the indemnity provision. Admittedly, this is the ideal situation and won't always fly. The business partner writing the check will typically resist giving you a *blank* check.

Finally, use common sense. While "boilerplate" indemnity language may be good in many cases, it should always be subject to review and modification to make it relevant. Boilerplate language that works in one state, may not work in another. And even the subject of the indemnity may not make sense. Consider a contract with an advertising agency that uses "boilerplate" indemnity language that requires indemnification for bodily injury and property damage (since that is the dominant exposure in most situations) but makes no mention of indemnification for advertising injury which is the real exposure in this case. Such a

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"boilerplate" provision could be a target since it is of limited applicability and is perhaps even irrelevant.

Wrapping up the Indemnity Issue: The indemnity contractual provision is naturally the first step in protecting your own bottom line. In fact, if you do not establish an indemnity obligation on the part of your business partner in your contract with that partner, then the remaining risk transfer ingredients are of little or no value.

Work with your attorneys to establish standard indemnity language that should serve as a "starting point" for all of your contracts. Make sure that there is a process in place for contracts to be reviewed so that your "standard language" can be included and appropriately modified, and any objectionable indemnity provisions can be struck. This may require an integrated process between you, your legal department and the business department who is actively negotiating with business partners.

Note that throughout this discussion of indemnity, we have not yet mentioned insurance. Indemnity provisions merely establish the obligation of one party to indemnify the other. It is then prudent for the party who has the indemnity obligation (i.e. the indemnitor) to acquire insurance that will respond and fulfill their indemnity obligation if necessary. But if the indemnitor fails to do so, it is does not relieve them of their obligation. In the absence of insurance funds, the indemnitor would have to tap their own assets to fulfill this contractual obligation. While you may say "I don't care where the money comes from, so long as my firm gets paid for the loss," you do have a vested interest in taking a more proactive attitude.

Some of your business partners may not be capable of fulfilling the indemnity obligation from their own assets. Or perhaps they are capable, but without insurance they are certainly more likely to fight attempts to invoke the indemnity obligation. This can make for an ugly and costly battle that can ruin an otherwise fruitful business partnership. So it is for these reasons that you cannot and must not stop and feel content with just a good indemnity provision. It is only the first step in the truly effective risk transfer.

Contractual Liability Insurance. This is a particular insurance coverage that is often included in Commercial General Liability policies. This coverage is specifically intended to pay a firm's liability that it incurs through its agreement in contracts to indemnify other firms. If you do not verify that your business partner has secured this coverage in an adequate amount, then the indemnity provision that you negotiated may not be worth much.

There are a few important aspects to understand regarding contractual liability insurance. First, the coverage is intended to respond only to tort liability that the business partner has contractually agreed to assume on your behalf. It is *not* going to respond to matters that are simple breaches of contract. So although the coverage's name may be occasionally confusing, the coverage does not extend to any claim you may have against your business partner for such things as failure to deliver their product within the contractually agreed time period.

Another important facet of contractual liability insurance is that it only directly benefits the business partner who has purchased this insurance coverage, not you. The business partner's insurance company will pay them via its normal claims-handling process. Your only avenue for making your firm whole after a loss is still the indemnity provision. This means that you cannot directly tender a claim to the insurance company which would certainly be much more convenient. Instead, you must rely on the indemnity provision with your business partner and hope that their contractual liability insurance coverage comes through for them without any trouble.

Additional Insured Endorsements. An additional insured endorsement extends insurance coverage under a policy to another entity. This is a key ingredient in the risk transfer recipe. By requiring your business partner to add your firm to their insurance policy as an *additional insured,* you establish direct policy rights for your firm with the business partner's insurance

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carrier. Essentially, you gain coverage for losses independent of the indemnity provision and any enforceability issues that it may have.

The additional insured endorsement will usually restrict your rights to claims that fall within the realm of the business relationship, so you can't just take any liability claim filed against you and tender it to your business partner's insurance company. The claim must have arisen from the activities involving your business partner. But within this stipulation, the business partner's insurance carrier has a duty of good faith to both your business partner (the purchaser of the insurance policy) and your firm (the additional insured).

It is incredibly convenient and makes your life much easier when you no longer rely solely on the indemnity obligation of your business partner, but can tender claims directly to their insurance company. Requiring that business partners name you as an additional insured, and then verifying that this occurs (we'll talk about this verification process shortly) allows you to handle claims much more conveniently. Imagine that you receive notice of a claim arising from an incident that involves your business partner. As an additional insured, the business partner's insurance carrier is obligated to defend and pay for the claim against you just as it would be if the claim were made against their own insured (i.e. your business partner). You simply tender the claim to the insurance company with notification of your additional insured status.

This still isn't the perfect solution because you don't gain any more rights than exist in the insurance policy itself. If the insurance policy on which you are an additional insured has limits that are not high enough to handle a large claim, or perhaps the limits have already been used on prior claims, you may still have to rely on your indemnity provision with your business partner. This is another reason that you should include *verification* processes in this risk transfer recipe to ensure success. More on that later.

A word of warning as you exercise your additional insured rights: As you tender claims to your business partner's insurance carrier, put your *own* insurance carrier on notice as a precaution. Just in case things don't work out with the additional insured coverage, you don't want to preclude coverage under your own policy because you failed to give your carrier the required notice.

Insurance Requirements.. If you intend to require indemnification from your business partner, it would be naïve to assume that the business partner is adequately insured and capable to live up to the obligation to your satisfaction. After all, what good is the indemnity provision if exercising it puts your business partner out of business? Requiring that your business partner carry insurance coverage in appropriate amounts should go hand-in-hand with the indemnity provision of your contracts.

Verifying compliance with these insurance requirements is not only prudent, but necessary. This is one contractual provision that cannot be handled in a reactive fashion. Let's face it, if a claim occurs and then you find out that the business partner had minimal or no insurance to cover a particular type of claim, it's too late to get extra insurance coverage. Either you'll have to take it out of the business partner's assets or eat the claim yourself. It makes everyone's life easier to verify insurance proactively.

Let me be clear about that last statement. We can all nod our heads in agreement now, but the reality of verifying business partners' insurance is that it is very detail-oriented, communication intensive, and ongoing. This means that people within your own organization (particularly those whose duty requires that they just "get the job done") as well as the business partners themselves will often see this verification process as a "headache" and an obstacle to getting business done. It is often perceived as a great deal of activity, paperwork and cost that is intended to address a problem with a very low probability of actually occurring. While we can sympathize with these perceptions, we must point out that this same

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logic would call into question the very existence of risk management and insurance in general. Last time I checked, the insurance industry, for all of its high premium costs, paperwork and headaches, has been relied upon for hundreds of years to shield us from those low probability incidents that always seem to occur sometime, somewhere.

So what insurance requirements should be stated in the contract anyway? This question is a white paper unto itself, so I will give it only a brief coverage here. Consider the indemnity obligation that has been established and to what extent you are to be indemnified and for what kinds of claims. Then make sure that you require insurance coverages that will respond to the types of claims anticipated by the indemnity obligation. Typically, you will require commercial general liability insurance including such coverages as *contractual liability* among other common coverages such as products/completed operations, and premises/operations. If your business partner is a transportation vendor, you can reasonably anticipate that indemnification needs will involve automotive accidents and so you should require automobile liability and perhaps cargo liability insurance. If the business partner will have their own employees working on your projects, you should require them to have workers compensation and employers liability insurance to make sure that you won't get stuck paying claims for *their* injured workers (or even worse, having your own workers compensation audit-based premium increased).

Besides just requiring specific insurance coverages, you should also require minimum limits on those insurance policies so that you can be reasonably assured that the policies will be able to pay the largest claim you can anticipate. For example, you may not anticipate the need for millions of dollars in liability limits for a business partner that supplies you with paper supplies, but you may want to require several million dollars of liability limits from the business partner who builds your new high-rise office complex. And always phrase your required limits using the phrase "a minimum of $x" rather than just "$x" so that judicial actions do not interpret your stated insurance requirements as artificial "caps" on the business partner's obligation even though they may carry limits higher than your stated required limit.

Your contract should specifically require that your firm be added to the appropriate coverages as an additional insured as discussed above. You can mandate precisely how your firm should be named (e.g. "ABC Corporation, its officers, directors, employees and agents") and on what coverages. You should also stipulate that the insurance cannot be cancelled, non-renewed or materially changed without providing notice to you.

There are many aspects to determining the appropriate insurance requirements for various business partners. Just remember that the intent behind these requirements is to make the entire risk transfer process as smooth and conflict-free as possible so that your relationship with your business partner is not destroyed by a future liability incident. Business partners may not readily see this when you are asking them for all of these insurance requirements.

Proof of Insurance. Aside from the indemnity provision in the contract, three of the previous four risk transfer ingredients involved aspects of your business partner's insurance coverage. Verifying the presence and adequacy of contractual liability insurance, other coverages and additional insured status is common sense. But there's more to it than that.

As I alluded to at the close of the previous section, many of your less-sophisticated business partners may view the insurance requirements with a "what-business-is-it-of-yours" attitude as they take exception to being told what and how much insurance they must have. And some will take offense at the additional insured requirement if they interpret that as your attempt to make them your insurance company. The typical response is, "We got our insurance, you go get your own dang insurance."

Although some insurance requirements will be negotiated and hashed out during the contract development phase, you probably have many more situations where your firm relies on

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purchase order boilerplate terms and conditions that include standard insurance requirements. We all know how often these terms are read by business partners in advance. Verifying a business partner's insurance for the first time is often their first encounter with your firm's insurance requirements. Be prepared to engage in the communication-intensive educational process that may be required with some of your business partners to explain why the requirements are beneficial to both firms, and what *additional insured* really means. It may take some lengthy and persuasive conversations to convince some business partners that this really is for their own good. After all, you're telling them that you just want to make sure they have adequate insurance so that if something bad happens, you can recover from the big, bad insurance company instead of taking it out of their hide. Believe me, that is not an easy message to get across to some business partners.

Even convincing your own fellow-employees of the necessity to verify a business partner's insurance will require some educational efforts. What good is the indemnity provision if exercising it puts your business partner out of business? Or worse yet, what if the business partner is already out of business by the time a claim surfaces. No indemnification will be possible in that case. You can only hope that you can find proof of the business partner's insurance policy that was in force for the claim's relevant timeframe, and then you further hope that you have evidence that you were an additional insured on that policy. If you find that proof, the fact that you cannot find the business partner anymore is virtually irrelevant. But without such proof, you're left holding the bag for a claim that was *supposed* to be someone else's responsibility. And you have to explain to your CFO why you're stuck with someone else's claim. *[Insert your own long, regretful sigh here.]*

The preceding paragraphs are just the tip of the iceberg when it comes to the "headache" that is *business partner insurance verification*. Pardon the cliché but, "It's a dirty job, and somebody's got to do it."

Now that we have established that it's a dirty but necessary job, let's talk about the details of verifying insurance coverages. The primary means for obtaining proof of insurance is the venerable *certificate of insurance*. Although standard certificates are replete with disclaimer language that makes it clear that the certificate is issued as a "matter of information only," it still can be very useful information. Just consider the example mentioned above regarding a business partner who is no longer in business. I have heard several true stories about slip and fall claims resulting from snowplowing negligence. The typical sad story is this:
Step 1: Customer falls in a poorly plowed parking lot,
Step 2: Embarrassed customer goes home without saying a word,
Step 3: Customer is nagged by an injury over the next few months,
Step 4: Customer finally decides to file a claim against parking lot owner,
Step 5: Investigation determines that snowplowing contractor was negligent and is liable,
Step 6: It is discovered that the one-man snowplowing firm no longer exists because he sold his truck and moved to Florida,
Step 7: The frantic search is on for a certificate of insurance identifying the snowplower's insurance company and hopefully evidencing additional insured status,
Step 8: Sad ending when no such certificate can be located.

Certificate of insurance documents fly around by the millions. The industry continues to look for new and innovative ways to eliminate the paper and verify insurance through alternate means. Internet technology has yielded no shortage of imaginative ideas. But none have gained the critical mass necessary to replace the much maligned certificate document.

Nevertheless, one must be aware of some limitations of insurance certificates. First, certificates come in many forms. Although the vast majority of certificates are issued on "industry-standard" Acord forms, there are still several insurance carriers who issue their own proprietary versions. This can complicate the process of reviewing, interpreting and tracking the required insurance coverages, especially for insurance novices.

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A common complaint regarding certificates is that they represent a snapshot of coverage in effect at a given point in time. Shortly after the issuance of a certificate, other claims may use up some or all of the limits, or the business partner may cancel or change some of the coverages. Unless you have required and received a policy endorsement that stipulates that you will be notified of any "material change" or coverage cancellation, you may find an otherwise proper certificate is completely inaccurate by the time you need to rely on it. While this is true, there are things you can do about it such as requiring the aforementioned policy endorsement. Another approach offered by some third party insurance verification services is an "auditing" approach. This process involves periodic re-requesting of updated certificates even prior to expiration of the current policies, and even requiring statements of available limits.

Another issue with certificates is that human errors and omissions on the part of the certificate issuing authority can cause you to receive inaccurate information. In other words, a number of things could happen that cause the certificate information to vary from the actual terms of the business partner's insurance policy. Of course, the certificate and its disclaimers will never override the actual terms of the insurance policy itself. However, there is precedent for claims against the insurance agency or brokerage who issued the incorrect certificate. Such claims could end up tapping the insurance agency's "errors and omissions" insurance policy, but that is certainly not the ideal route for you to rely upon for indemnification of a claim.

What about "self-insurance"? It's likely that some of your business partners (particularly the larger ones) will be self-insured for some or all of the coverages you require. They may submit a certificate of insurance that names an insurance carrier that you do not recognize because it is most likely a captive insurer, setup and wholly-owned by your business partner. Or they may just inform you that they have no insurance because they are "self-insured." Now what? Since most of these self-insured firms will be rather large entities, you would have to be pretty large yourself and carrying significant market clout to force such a business partner to acquire specific insurance to your satisfaction. And doing so would probably not be fiscally reasonable in that case for either you or your partner.

So the prudent alternative is to request and review financial statements from your business partner. They should be able to demonstrate that they are financially healthy with a net worth that is large enough to handle losses at least up to the size of the insurance limits that you would request of them. It's a judgement call, but that's why you get the big bucks.

The first cousin of "self-insured" is the "large deductible" or "large self-insured retention" situation. Some business partners may be "self-insured" for the first several thousand dollars of any claim, with an insurance company picking up the tab over and above that. Once again, if you can feel comfortable with the business partner's financial capabilities to handle this, then you're probably okay. If not, look for another business partner if you can. If you have legitimate concerns over their financial ability to handle their self-insured retention then they may well be taking other financial shortcuts that could increase the likelihood of claims in the future.

Proof of Additional Insured Status. One of the most important reasons for obtaining proof of the required insurance is to verify your status as an additional insured on the business partner's coverage. After all, that is one of the primary reasons for this entire quest. So you definitely want to check that the certificate of insurance indicates additional insured status in your favor on the appropriate coverages, and names your firm as you have required in the contract. Also, be certain that there is no limiting language on the certificate that constrains the additional insured status too tightly. A common certificate practice these days is to issue the certificate with a disclaimer page that basically says "even though we may show you as an additional insured on this certificate, that isn't necessarily so unless we have also remembered to endorse the policy." Yes, I am paraphrasing, but you see the problem.

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In fact, even without such a disclaimer, if someone drops the ball and the insurance policy is never actually endorsed to add you as an additional insured, then a statement to the contrary on the certificate isn't likely to get you very far. You might have another potential errors and omissions claim against the insurance agency for a misrepresentation on the certificate, but your chances of success are limited. The best solution to the additional insured disclaimer/oversight conundrum is to require a copy of the actual additional insured endorsement to accompany the certificate of insurance from your business partner.

Requiring the actual additional insured endorsement pays another dividend as well. Even your status as an additional insured on your partner's policy has its limitations. Insurance certificates will never go into detail about the conditions of the additional insured coverage. But you can be assured that your additional insured policy rights will only apply to claims that fit within a well-defined scope as described in the endorsement itself. Obtaining an actual copy of the endorsement allows you to know precisely what your additional insured rights are.

Certain additional insured endorsements such as the commonly used "broad form vendors" endorsement will only extend coverage to you under the policy's "products/completed operations" coverage. So if your business partner is also involved in other activities besides merely selling you a product service, you may be shocked to discover that you are denied additional insured coverage if an incident arises out of your business partner's negligence in one of these other areas.

For purposes of fun and entertainment let's examine a plausible example of this. Suppose that a salesperson from your business partner hosts a presentation of a new product line for some of your key customers. During the glorious event that is being held at your business partner's lavish offices and at their expense (oh happy days!), a demonstration platform collapses and injures some of your customers. The lawsuits roll in and name your firm as a defendant because your firm sent the invitations, and it was your firm's name all over the banner above the crumpled platform. Since this little fiasco is neither a "product" or a "completed operation" in the eyes of the insurance carrier (it would actually be covered under the business partner's "premises/operations" coverage), you would be out of luck if your additional insured coverage applied only to the products/completed operations coverage.

The moral of the story is to know what the scope of your additional insured coverage actually is. If you don't check on it, you may be surprised when you find out too late.

Managing the Insurance Verification "Headache". As I said before, it's a dirty job but somebody's got to do it. So how do you do it? After doing a thorough job of establishing contractual risk transfer, indemnity provisions, insurance requirements, are you going to let it all unravel when the insurance requirements go unenforced? But yet it seems that this whole effort was pretty painless until you have to start requesting, reviewing, tracking and following-up on what could be thousands of insurance certificates and several if not hundreds of unique contractual insurance requirements. This is the point where some risk managers throw up their hands and simply say, "Certificates aren't worth the paper they're printed on, and we have a solid indemnity clause so we're not going to track this mess." Everyone is entitled to their opinion, but I believe we have already examined reasons why I consider this to be a naïve attitude if not an outright "cop-out." (That's my editorial opinion to which I am likewise entitled in case you happen to disagree… and I'm sticking to it.)

So what are some ways that you can handle this administrative nightmare of tracking and enforcing the contractual insurance commitments of your business partners?

You can take a centralized, do-it-yourself approach. This typically requires some software or an elaborate spreadsheet or database, and a staff person or two with at least some insurance knowledge. The advantage is that you can implement a consistent tracking effort over which you can exert control, guidance and prudent risk decision-making. The disadvantage is that it

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requires substantial investment of time and money for the headcount, software and management of the administrative tracking process. And the software technology is not a trivial issue because in order to handle this process efficiently you need some fairly specialized software logic and you must either purchase it off the shelf (and hope it fits at least *most* of your needs), or have it custom programmed ($$).

Another approach is the decentralized, do-it-yourself method. This usually means that your firm's purchasing and/or merchandising departments make sure that business partners comply with insurance requirements… uh, yeah right. I know that several firms take this approach, and forgive me if yours is one of them, but they are truly kidding themselves. This approach is next to worthless because unless your purchasing and merchandising employees are fascinated with insurance industry concepts and take CPCU courses as a hobby, the few certificates that they actually obtain will receive no real insurance scrutiny. And even if they did, there would be no coherent and consistent enforcement of insurance requirements, and no reliable means for even tracking down a certificate that may have been obtained. The same staffing costs exist as in the first "do-it-yourself" method, but they are dispersed over other departments (but at least its not coming out of your budget). More realistically, there is actually very little staffing cost with this method… because it is isn't being done! Nothing is more disheartening than having all these non-insurance savvy people requesting this certificate document and then because it is inconsistently applied, the one time you need it, either it's not found or lacks basic requirements. At that time, both the risk manager and the purchasing/merchandising employees (who have endured two-hour "risk management training sessions" in order to learn why they need to get this information, but never learned enough to know when it's good enough) are mad at each other and on the defensive.

Yet another method is to outsource the process. Some insurance brokers will handle this process for their clients, and there are some third party firms who specialize in this very thing. Depending on how you go, this may seem more costly upfront, but only because most risk managers are not honest with themselves about their true costs of doing it themselves. Either the true cost of the labor, software and support if they do it themselves, or the true cost of having a very inconsistent or non-existent do-it-yourself process in place. Insurance brokers will sometimes track insurance certificates and their fees are in the overall brokerage fee package somewhere, even if they are not explicitly stated. Brokers do not do anything "for free." Furthermore, brokers do not specialize or make any meaningful profit from this activity so it rarely receives the focus and effort that it should. Even the "big boys" among brokerages lack the specialized software and Internet technology to do this job with the same consistency as specialized third party firms.

A common objection to outsourcing to a third party firm is the fear of losing control. But with available Internet technology today, the administrative headache can be outsourced to a firm that specializes and has the sophisticated software to manage the process, while the overall control and monitoring of business partner insurance compliance can be retained by the risk manager via the Internet.

The final point that I wish to make regarding the whole "proof of insurance and verification" issue is this: In terms of obtaining adequate proof of insurance, one needs to strike a balance. On one hand, with technology and human expertise you could establish a tenacious pursuit of crossed T's and dotted I's on every business partner's insurance evidence. But even then, you will never plug every hole, fill every gap and go to sleep with an airtight seal against business partner liability risks. On the other hand, turning a blind-eye, or worse yet, making a half-hearted attempt at verifying insurance such that a false sense of security develops, is just waiting for the inevitable. You just hope it doesn't happen on your watch.

Nevertheless, you should most certainly begin with the philosophy of the 80/20 rule. Make sure that you concentrate your efforts on the 20% of business partners who present 80% of the risk. The majority of your potential risk is probably quite concentrated in just a few of your

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key business partners. Devote your tenacity and rigid insurance requirements to these partners. Then you can work your way down the list. At some point, you have to decide whether or not you want to expend much effort on getting a "perfect" certificate of insurance from the local printer whom you paid $250 last year for some printed retirement dinner napkins. Although we could probably dream up some scenarios where this printer could have some negligence and liability, it would be a stretch to say the least, and definitely a waste of your resources. So use common sense.

Conclusion. One last piece of advice: Be prepared for the battle. This entire recipe requires significant coordination, education and cooperation. You will need the support and understanding of many of your fellow employees and your firm's business partners. As discussed earlier, both of these groups will often fail to see the reasoning behind your quest. You may be accused of being paranoid, overzealous and even labeled an obstructionist or a deal-killer. I would advise you to follow this recipe as closely as you can as often as you can, but be wise in choosing your battles. You won't win every one of them, and it is best to know when to gracefully retreat and live to fight another day, as opposed to getting bloodied and wounded to the point of ineffectiveness.

In the end, I believe that the biggest hurdle to managing business partner risk is the dirty little chore of insurance verification. The entire recipe requires a diligent effort, but the ongoing administrative headache of verifying compliance with everything you establish in your contracts is the most painful ingredient. Finding the right solution for your firm to tackle this chore is the final ingredient, and it helps remove hints of bitterness from this risk management recipe. *Bon appetite!*

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