



What to Ask, Avoid and Know Regarding Tribal Insurance Policies

by Derek Valdo

Selecting the best insurance policy requires due diligence – particularly for tribal governments and businesses. Tribes and their entities have a unique set of advantages and challenges, and thus demand a flexible and customized property, liability, and workers' compensation insurance policy.

There are a number of core factors that tribes and Native-owned businesses need to weigh. The below checklist is designed to help tribal government and business decision-makers understand the hinge points for tribes in the insurance market, and to equip them with the knowledge and relevant questions they should ask to obtain the best-suited insurance plan.

Blanket Limits

Most brokers and people who buy insurance feel comfortable with blanket high limits, because it adds a sense of security. In reality, the policy often states that the blanket limit is subject to various terms – many of which may not apply to a company.

For instance, some policies guarantee every tribe \$1 billion worth of coverage, but that is generally a pooled limit shared among more than one hundred tribes. The collective value of those tribal businesses likely exceeds tens of billions of dollars. Depending on the number of claims an insurance company receives in the same quarter, the amount of available coverage an insurance company will agree to pay a tribe may vary drastically.

The take-away: Tribes should not allow blanket high limits alone to lure their business.

Exclusions

Tribes should read the fine print. Some insurance policies boast that they cover everything – except what's excluded. On the surface, it may seem like a great program, but those exclusions may be detrimental to a tribe or business. Take flood insurance for example. A tribe may have a \$10 million certificate for flood coverage. But the policy may state that the coverage only applies for tribes not in the high-risk A & V flood zones.

The take-away: A tribe should design an insurance program around its identified key risks.

Deductible Rates

The average deductible in the market space for a small to medium-sized tribe is \$5,000. Tribes should consider their safety culture, and if it makes sense to raise their deductible and lower their annual premium rate, or vice versa. If a tribe or business

conducts proper safety training, education, and maintenance of vehicles and equipment, then it will have a lower risk classification and can reduce its premium rate and raise its deductible, because the chances of having a loss are much lower.

If a tribe's safety culture is not up to par, it should push down its deductible and raise its annual premium payment. For any small or medium-sized tribal government or business, revenue and income is often very tight. High deductibles could dramatically affect financial outcomes in a bad claims year.

The take-away: What's best for one tribe may not be ideal for another. A tribe should review its claims portfolio and assess its safety measures to determine its most logistical deductible rate.

Risk Management

Tribes often pay for safety training, on-site inspections, and loss control services in their insurance contracts, but never receive these essential services. An insurance company should perform a thorough property and equipment review to reduce risk of patron and employee injuries.

Insurance providers should also teach workplace safety education, including defensive driving, and CPR and Automated External Defibrillator (AED) techniques for fast and effective response should any situation arise. Training should cover emergency procedures, methods of nonviolent-intervention and alcohol-awareness, among other things.

The take-away: Prevention is vital, and generally included in policy contracts. Tribes should ensure they get the inspections and training that is included in their policy.

Inflation

Just like salary creep, insurance has total insured value creep. A tribe's policy might have a 5 percent automatic inflation built in, meaning its premium might have increased by 25 percent over five years. Furthermore, some programs automatically increase the value of property insured. In actuality, a tribe may be paying for machines or vehicles that are no longer operational.

A general rule of thumb is that if a tribe has not changed providers or completed a bid or request for proposal in five years, their premium has gotten pretty heavy. Shop and compare, and ask other businesses if they are satisfied with their provider.

Companies should additionally inquire about the frequency and timing of audits, which are intended to ensure that buyers are paying the appropriate premium for their exposure.

The take-away: Tribes need to shop policy plans to ensure they are paying no more than the appropriate premium for their exposure.

Sovereign Protection

Many insurance plans subject tribes to State Workers Compensation Statutes. However, exercising tribal sovereignty can limit the fraud and abuse that's typical in state systems. The greatest example is intoxication. If an employee comes to work intoxicated and hurts themselves, most state systems will pay for their injuries, which would not be covered under tribal law.

Tribes should use an insurance provider that has a track record of doing business with Indian Country, and preferably one that will appoint seasoned, tribal lawyers to cases and pursue arbitration hearings to avoid lengthy court battles, saving tribes legal expense.

Insurance carriers should pay mind to the core cultural values that have shaped tribal communities for generations. Buyers should inquire if the insurer's workers' compensation program includes traditional medicine men.

The take-away: Choosing a provider well versed in the intricacies of tribal law and culture will better protect tribes and employees.

Community Support

An insurance provider that works in Indian Country should help tribal governments and business cut costs for the betterment of tribal communities.

"In general, we believe it is always advisable for Indian Country to contract and do business with other Native-owned businesses," said Gary Davis, President, and CEO of the National Center for American Indian Enterprise Development. "Not only does it provide the customer with quality goods or services, but helps sustain the Native American economy by keeping dollars on the reservation. To truly have an 'economy' in Indian Country, dollars need to be circulated several times over within our tribal communities to create sustainability without reliance on government programs." ♣

Derek Valdo is the Chief Executive Officer for AMERIND Risk and a Tribal Council Member of the Pueblo of Acoma. He can be reached by calling (505) 404- 5000 or email dvaldo@amerindrisk.org.



Bigger isn't always better.
Sometimes, you have to be
COLOSSAL

Colossal Diamonds™ is a quiet classic. This larger-than-life game takes up the space of three standard cabinets, but performs equivalent to six. A 3-reel, single-payline game featuring simple, classic gameplay, Colossal Diamonds™ has proven to be a massive hit for players and casinos wherever it has been placed.

Contact your AGS representative for details.

    

866-720-6105 PlayAGS.com

© 2015, AGS, LLC. All Rights Reserved. AGS and American Gaming Systems are registered trademarks of AGS, LLC.



“Insure” Tribal Coverage Meets Gaming Entity Needs

by Geoffrey C. Blackwell

Tribes have many options when looking for workers’ compensation insurance. Finding what works best for individual tribal operations, especially when it comes to gaming, can be a challenge. Insurance packages are dependent on the gaming compacts negotiated with each state and tribal workers’ compensation ordinances.

Employee benefits and salary alone are more than half of a gaming entity’s total operating cost. Saving money on insurance is critical to maintaining profit. Knowing what key aspects to look for to find the best workers’ compensation package and asking the right questions can save your operation money, help further protect tribal assets and uphold sovereignty. Working with the insurer to develop the right coverage can also save employees time away from the job, while adding the needed care and attention for one of a business’ most valuable assets: the workforce.

Gaming Compacts and Statutory Obligations

When tribes first began negotiating gaming compacts with states in the late 1980s, some compacts had language requiring gaming operations to provide benefits that were the same as or similar to other businesses in the state following state laws. Some of these compacts with state-level statutory obligations still exist, but very few. Many tribes have since negotiated compacts with language that stipulate tribes must provide benefits that are similar or are comparable to other businesses in the state. What this does is give the tribes some leeway in creating their own workers’ compensation laws to fit the needs of the tribe. A workers’ comp package can be created with all the necessary components – wage loss, medical and rehabilitation services, death and a dispute resolution process – that is culturally-sensitive, has no ratings bureau fees, no state and premium taxes, or the big fees of commercial insurers.

When a tribe does business with a state-covered program or conventional insurer, at least one state court has ruled that a tribe waived its sovereign immunity with respect to its workers’ compensation liabilities when it paid the premium, thereby subjecting the tribe to the jurisdiction of the state workers’ comp laws and courts.

Tribal Worker’s Comp Laws

Unlike changes to state statutes or congressional public law, a process that is often politically charged or takes an

enormous amount of time and resources, a resolution to change a tribal law can occur at the next tribal council meeting. After a review of a tribe’s workers’ comp law, recommendations can be made to strengthen or enhance the law to meet the tribe’s cultural needs while protecting the tribe’s assets and upholding tribal sovereignty. For example, in the State of Minnesota, an employee has up to six months to report an injury to the employer/insurer. A tribe can shorten that period to 48 hours, which would allow for early intervention in the claim process. Studies show that early intervention allows the employer to provide better support to the employee during the recovery process, hence, providing greater control to the insurer to better manage the costs associated with the claim.

Tribal laws and policies should also be reviewed on an annual basis to assess risk. An insurer that works with tribes nationally can make recommendations based on other tribes’ operations, which could help tribes avoid pitfalls after seeing similar incidents in other operations.

Additionally, the insurer should be adjudicating claims based on tribal laws and policies. When tribal courts or arbitrators are utilized, it can cut down on what can be lengthy litigation as seen in state courts. Both parties may also feel more comfortable with the tribal adjudication process, which is slightly less formal, to resolve the issues. Utilizing this process will expedite getting the employee back to work or on light duty. Keeping your employees productive and active is better for morale.

Creating Efficient Wellness & Return-to-Work Programs

While it is important to create or strengthen workers’ comp laws and policies, it’s also vital to create culturally-sensitive employee wellness and return-to-work programs. A critical component to creating such programs is to gain initial input from supervisors and support from senior management. Offering effective wellness programs will help reduce accidents and medical claims. For example, a nine-year study by the National Council on Compensation Insurance found that obese employees filed twice the number of claims, had twice the amount of medical costs, and spent five times more days away from work following an injury than non-obese employees.

Creating a return-to-work program that includes clear

“Employee benefits and salary alone are more than half of a gaming entity’s total operating cost. Saving money on insurance is critical to maintaining profit. Knowing what key aspects to look for to find the best workers’ compensation package and asking the right questions can save your operation money, help further protect tribal assets and uphold sovereignty.”

goals, communication and empathy from supervisors will also reduce medical expenses, lost time, loss cost, increase working efficiency, and reduce turnover and indirect costs.

Employees are strategic investments and critical components of every business. Accidents will happen, but good insurance coverage will help protect a tribal business, keep employees and tribal members safe, and help reduce

the impact of an organization’s total cost of risk. Creating a safety-minded culture and preventing further injury in the future are also essential. ♣

Geoffrey C. Blackwell is Chief Strategy Officer and General Counsel for AMERIND Risk. He can be reached by calling (505) 404-5000 or email gblackwell@amerindrisk.org.

GENERAL CONTRACTING • PRECONSTRUCTION
DESIGN-BUILD • CONSTRUCTION MANAGER AT RISK

BUILDING
trust.

PENTA

VISIT US AT BOOTH 430
DURING THE 2016 INDIAN GAMING TRADESHOW & CONVENTION

PENTABLDGGROUP.COM