VWC

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EDUCATIONAL CONFERENCE

The Top 10 Questions to Ask Your Broker about Workers' Compensation

But were Afraid to Ask

About Your Speaker

- Gary J. Rakofsky is a dedicated (second generation) insurance professional with 43 years experience in the industry starting in 1973.
- Early in his career he was a rater and underwriter with the Continental Insurance and Great American Insurance Companies
- Gary moved to the brokerage side in 1977 with Johnson & Higgins where he was exposed to most lines on insurance in the Middle Market arena.
- J&H was acquired in 1998 by Marsh & McLennan where he broadened his knowledge with Construction Wrap-ups and Management Liability exposures.
- For the past 7 years Gary has been with a regional Broker acting as the Director of Insurance Operations and head coverage consultant advising staff on day to day issues as well as teaching an all lines in house course of study for new hires. He has been certified by the State of New York to be an instructor for the Property & Casualty Insurance Brokers' Licensing Exam.

#1 I have heard the term "Remuneration." How does that differ from "Payroll"?

- A Workers' Compensation premium is based on the "remuneration" (per $100) applied to the rates for the codes on your policy. Remuneration means money or substitutes for money.
- Examples of Inclusions:
  - Wages or salaries including 2/3 of overtime pay
  - Commissions, draws and piece work
  - Holiday, Vacation or Sick pay
  - Bonuses, including stock bonuses and Profit sharing or incentive plans
  - Payment of amounts otherwise required by law to be paid by the employee – insurance or pension plans (e.g. Social Security)
  - The value of lodging as part of pay
  - Meals if part of pay, store certificates, merchandise, employee savings plans, retirement or cafeteria plans made through salary deduction; annuity plans; Expense reimbursements not shown as a valid business expense; Payment for the filming of commercials (excluding residuals)

How does that differ from "Payroll"? Continued

- Examples of Exclusions:
  - Tips or gratuities
  - Employer payments to group insurance or pension plans
  - Special awards for individual invention or discovery
  - Severance except time worked or accrued vacation
  - Payments for active military duty
  - Expense reimbursements that are a valid business expense
  - Employee discounts for employer's merchandise
  - Supper money for late work
  - Work uniform allowances
  - Disability income benefits from a third party
  - Perks such an automobile, an airplane flight, incentive vacation (contest winner)
  - Club memberships, tickets to special events; Employer contributions to salary reduction, employee savings plans, retirement or cafeteria plans (contributions made at employer's expense that are determined by the amount contributed by the employee)

#2 **Are my employees are coded correctly?**

- There are only so many Codes to go around
- Codes are based on employee exposure to a hazard
  - The “Governing Class”
  - The “Boys and Girls Club” case study
- “All Employees including Clerical and Drivers”
  - When a code contains this as part of its description you may not be allowed to separate payroll into the 8810 Clerical Code (the lowest rate)
- Who decides on the Codes
  - The Insured does not choose the codes; The Insurer does not choose the codes
  - The State WC Bureau ultimately determines the codes
  - The WC Bureau is a regulatory agency and has the power to decide which codes will apply
- A Game of “Whack-A-Mole”
  - If lower rated codes are used the losses will be higher and so will the premium

#3 What Credits are available for my policy?

- Certain Credits and Debits affect your final WC premium
- There are Schedule Credits / Debits, Premium Discount and an Experience Modification Factor.
  - Schedule Credits / Debits - Depending on your State, an insurer can apply a Credit if they feel the risk is superior or a Debit if they feel it is inferior according to their evaluation. It can vary + / - 10% in either direction. Insured's programs that can bring Credits are:
    - Return to Work Programs
    - Drug and Alcohol Programs
    - Workplace Safety Programs
  - Premium Discount is given to all Insureds and varies according to the size of the premium
    - It is usually between 8.5% and 9.5%
    - The higher the premium the larger the discount
    - It reflects the savings by the insurer for larger policies that have more premium but proportionately less work to issue a policy than a smaller one.
  - Experience Modification Factor (discussed more fully in the next section)
    - It is based on 3 years of losses starting 6 months back

#4 What is an Experience Modification Factor?

- All Insureds over a certain amount of standard premium have a “Mod”
  - Insureds in the same business are compared to their peers
  - Insurers provide Unit Statistical information (Codes, losses and premiums) for each Insured to the WC Bureau who “promulgates” (calculates) the Mods
  - The Calculation is complex – it contains the “Expected Losses” for each Code
  - A Mod below 1.00 creates a Credit; A Mod above 1.00 creates a Debit
- What kind of losses most affect your “Mod”
  - The “Threshold” is the limit above which losses are discounted
  - For years this Threshold had been $2,500 but has been, and will be, increasing to $10,000 or more in recent years therefore:
  - Small losses affect the Mod more than large losses; Example
    - 5 losses under $10,000 will have more impact than 1 loss of $50,000 or more
- Another Game of “Whack-A-Mole”
  - Lower rated Codes (8810) have lower Expected Losses.
  - Exceed the Expected Losses and the Mod goes up

#5 What is Employers Liability versus Workers' Compensation? What Limits should we carry?

- Employers Liability (EL) covers suits arising out of a WC Claim
  - Workers' Compensation is the sole remedy for an injured worker
  - EL would cover a suit for loss of services by the spouse of an injured worker
  - Third Party over-actions can also be covered
    - These are suits against an Owner who is then indemnified by a General Contractor when a Sub-contractor's worker is injured and they sue under a "safe place to work" law
- What are the base Limits?
  - Bodily Injury by Accident - $100,000 per Accident
  - Bodily Injury by Disease – $100,000 Each Employee
  - Bodily Injury by Disease – $500,000 Policy Aggregate
- Why increase these limits? To what? What does that cost?
  - Umbrella underwriters may not "schedule" the EL (pay excess) unless the "attachment point" is high enough
  - Increase the limits to $500,000 each or $1,000,000 each as necessary
  - The cost is 2.5% to 3.5% of the premium before application of the Experience Mod

#6 What happens if we open up a location in a new State?

- A WC policy says that operations in a new State added after inception will be covered until the end of the policy period Except a Monopolistic State!
  - You can leave the premium adjustment to audit or
  - Add the location with estimated codes and payroll and pay premium now to avoid a bigger audit
  - If you go into the next policy period without adding the State it will not be covered!
- What is a Monopolistic State? How does and when does it affect me?
  - Monopolistic States (ND, OH, WA, WY, Puerto Rico and U.S. Virgin Islands) are those States or Territories where you must buy WC insurance from their State Fund
  - It only affects you if you have operations there
  - Add the Stop Gap Employers Liability Endorsement on the WC policy to provide EL there

#7 Should I consider a Deductible plan - Small or Large?

- Deductible Plans will pay claims excess of a stated amount on each and every claim as opposed to Guaranteed Cost which pay first dollar
- Small Plans can have an Deductible of $250 - $2,500 depending on your insurer and State
  - You will receive a discount on your policy for assuming this amount on each claim
  - Should I pay for any claims myself rather than use a Deductible?
  - Losses that are Medical only with 1 doctor visit and minimal lost time can be assumed by the employer and not reported to the insurer
    - Keeping them off your loss run can avoid a negative impact on loss experience and out of your Mod
- Large Plans have Deductibles from $25,000 - $500,000, even $1,000,000 each and every claim
  - Discounts in your premium can be substantial depending on the Deductible amount
  - Only consider a Large Deductible if you have very few claims
  - You may need to supply 5 or more years Loss Runs for the insurer to compute your “Loss Pick”
  - An Aggregate Loss amount can be built in to the plan to provide catastrophe protection

#8 When should I request a loss run? What are you doing to reduce our reserves?

- Loss Runs show you the claims that have been “Incurred”, “Paid” and “Reserved” as well as their associated “Expenses” during the policy period and prior years.
  - “Incurred” is the Total of that claim based on the estimate of the insurer
  - “Paid” is what has actually been paid out by the insurer
  - “Reserves” are the difference between Incurred and Paid. They represent what is left to paid out on that claim.
- If possible you should be getting loss runs on a quarterly basis
  - They should be reviewed with your Broker and insurer claims reps to make sure:
    - Claims are valued properly – Reserves are realistic and reduced whenever possible
    - Claims are closed as quickly as possible
    - Claims are “subrogated” when appropriate – Subrogation is a suit against a negligent party that may have caused the loss. Claims that are successfully subrogated show as a negative amount
- No matter what you should get a “currently valued” loss run 90 days before renewal! Why?
  - Your losses are evaluated / reevaluated for renewal about 30 - 60 days from renewal by underwriters for your premium AND stats are sent to the Bureau for your Mod

#9 What is "Pay-Go" / how can I smooth the audit process?

- All WC policies are subject to a year end Audit of your remuneration for your codes about 30 days after expiration
  - A self-audit form may be requested or
  - An Auditor may request to visit your premises and review your Books
  - An adjustment will be made to the expiring year and possibly the renewal
- “Pay-Go” is an arrangement where your insurer is permitted to tie into your payroll vendor on a monthly basis
  - The name was coined by AIG who was the first to offer it
  - Your premium is adjusted on a monthly basis
  - This tends to smooth out your premium and reduce the impact of a possible large additional premium on audit
- Pay-Go arrangements are not always what they promise
  - Not all insurers offer them
  - Payroll companies don’t like giving insurers access to their systems

#10 How do I prepare for the year end audit?

- Preparation for the year end audit begins a inception!
  - Based on your new found knowledge of Remuneration make sure that your books keep track properly during the year
  - Overtime pay should show the straight time and time and a half separately
    - The time and a half should be excluded by the Auditor
  - All Independent Contractors you engage should provide a Certificate of Insurance evidencing WC
    - If your don't have these to show the Auditor you will be charged the full contract cost as remuneration
  - Executive Officer payrolls can be capped at the State maximum
    - Example – If the Max is $1,900 a week ($98,800 a year) and the Exec makes more, the excess is excludable
    - It is technically calculated on a weekly basis so if the Exec's remuneration fluctuates it should be captured as such. But they might be classified as a Salesperson which has a higher rate.
    - WHACK-A-MOLE