



Red Cedar
Insurance Agency

Protecting Your Aquatic
Design, Construction, or Service Company
Through Proactive Risk Management

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About Chris Larmore & Red Cedar Insurance Agency

➤ Designations

- Certified Risk Manager
- Professional In Human Resources (SHRM)
- Certified Insurance Counselor
- Construction Risk and Insurance Expert
- Occupational Health and Safety Therapist



Enjoys: Fishing, spending time with my family, being out doors, and woodworking.

Red Cedar Insurance Agency consults aquatic companies on risk management, safety, human resources, bonding, and insurance. We can help clients in all 48 states.



Visit us online at www.RedCedarAgency.com

How Do We Manage Risk?

Start a process, account for all of our risks, and have a plan for each one

- **Identify and Analyze Our Companies' Exposures**
 - Checklists, loss runs, insurance agent, attorney How do we “manage risk” after we discover it
- **Compartmentalize Our Risk To Protect Against Catastrophic Loss**
 - Separate entities for your assets. Holding corps. Separate bank accounts so important for reducing amounts taken in cyber fraud. Payroll account, operating account, online transaction account.
- **Finance Risk**
 - Purchase the right Insurance- Insurance transfers and finances risk for us
 - Cost of risk = retained losses + insurance premiums + attorney fees + training time + deductibles, etc
- **Transfer Risks With Contracts**
 - Both to our insurance carriers and to/from our general contractors, subcontractors, project owners.
- **Avoid Risk**
 - Making the conscious decision not to participate in certain a act or activities in order to avoid risk - i.e. providing lifeguards or choosing not to sell products we are uncomfortable with
- **Prevent and Reduce Risks**
 - Safety training, hazmat training, reducing hazards in facility by design, using “safer” chemicals or products
- **Segregate and Duplicate to Reduce Risk**
 - Creating redundancy or duplication to reduce down times and provide a safer working environment. I.e. facility planning to store chemicals separately and safely. Having a good supply chain with redundant resources.

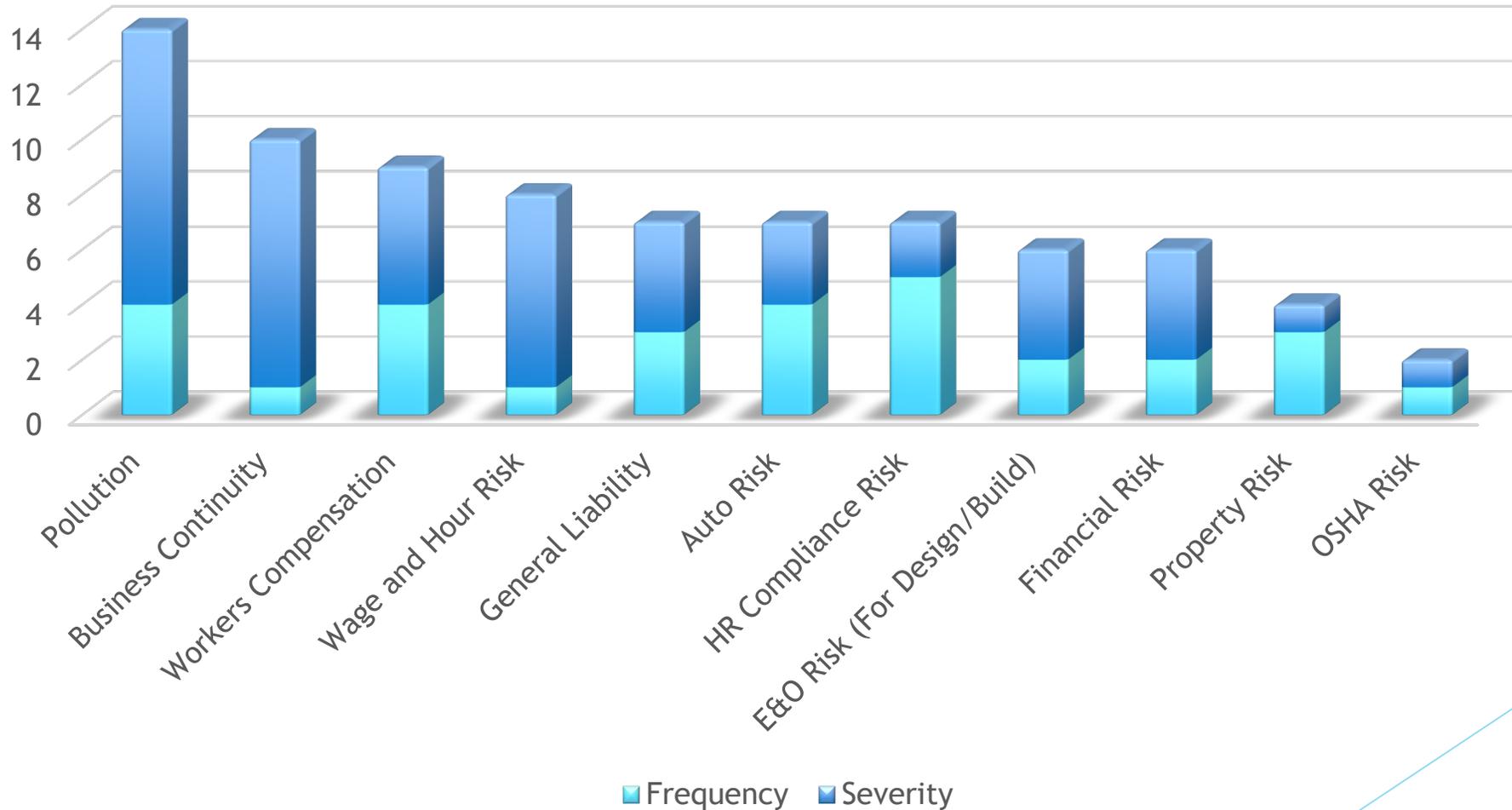
Formalize Your Risk Management Team

Ask All To Participate In Risk Identification

- **Who-** Attorney, CPA, Two Key Company Individuals, Insurance Agent.
 - Ask each of them what their three largest risks are for your company
 - Put together a list of your top 10 risks, and as your insurance agent to provide checklists of all available/recommended policies as well as a list of areas poorly covered
- **What** - Set up collaborative calls with your risk management team at least once a year.
 - Get their best ideas on how to manage, reduce, and transfer ALL risks your company identifies.
 - Have plans of contact and action for certain disasters/emergency scenarios, including a phone tree and communication with key staff.
 - Make sure to consider risks out side the scope of insurance
- **Why-** These professionals help form your risk management team and in a difficult scenario are some of the only parties who can help you to properly protect/defend your company.

Risk Identification For Your Company

Frequency + Severity = Total Anticipated Risk



Hazardous Material/Pollution/Environmental Risk

High in both frequency and can have very high severity
One of the most concerning risks your company faces

- Regardless of fault, a HazMat incident at a facility you built, service, or designed is likely to come toward your company. These claims have the potential for many people being injured so can be very large in scope.
- Pollution insurance and limits should be very carefully considered. How much is enough? \$2M or your companies' sales / 2. Whichever is greater. 10M per year company sales should consider a 5M limit.
- Make sure defense cost are outside of your insurance limits as attorney fees can quickly reduce your insurance available to pay out claims.
- Your insurance carrier must be notified within 24 hours in the event of any claim. Make sure you have an investigation process to thoroughly document and photograph the situation including taking down witness statements.
- Having service techs or supervisors take hazwoper trained, which includes incident response, is highly recommended and will help reduce and prevent hazmat claims.
- When we do experience a hazmat loss, what are our first few thoughts?
 - Get Hazmat first responders and fire department to the site immediately.
 - Provide MSDS information to all parties
 - Ensure the safety and evacuation of any remaining people
 - Get injured parties to a hospital as soon as possible
 - How many parties injured and how severe = probable claim size in \$
 - Was I responsible for testing? Monitoring chemical levels?
 - Can I show the cause of the claim and are we at fault?
 - What does my indemnity agreement with the facility say? Am I responsible for any/all risks at the facility?
 - Notify insurer, attorney, and agent asap!

Business Continuity

Make Sure Your Business Can Run Without You and Other Key Personnel

- Recommended Reading - The E-Myth
- Build a process driven company that doesn't require the owner to continue to run.
- Are you running your company or is your company running you?
- Knowledge transfer and good leadership will help take your company from a people driven company to a process driven company and allow you to scale and work past losing key personnel.
- How many days in a row can your company run without you?
- Plan ahead for death/disability of yourself and other key personnel. Including staffing and succession plans, employee cross training, and purchasing key person insurance on employees vital to the business.
- ESOPs and buy/sell agreements can be setup so employees purchase shares from your estate
- These plans take 5-7 years to properly set up and plan for, so don't delay, start to plan your exit today.
- Key personnel involved: Attorney (Contracts and ideas), Insurance Agent (Life/Disability Insurance), and CPA (Valuation)

Understanding Contractual Risk Transfer

Hold Harmless/Indemnity Agreements

- An indemnity agreement transfers risk from one party to another by written contract. **Every contract has one!** So so important to understand how it transfers risk to and from your company to other parties. 70%+ of the claims we see are not strictly “at fault”, but clients end up they assumed the risk by signing an indemnity agreements.
- Each contract should be carefully reviewed and negotiate on indemnity
- Your agent should review free and quickly and more complex agreements need attorney review
- Use your standard agreements with heavy protection for smaller projects or clients. We don't want to sign up for big risks on small contracts.
- Aquatic facilities may have agreements that hold you 100% accountable for any pollution or pool chemical incident within their facility. **Be AWARE!** This is a huge risk to sign up for.
- **Three Types of Indemnity Agreements**
 - Broad Form - Responsible for your clients and their claims
 - Intermediate- Indemnifies them unless they were completely at fault
 - Comparative- Parties handle risk proportionally to who was at fault.
 - ALWAYS seek comparative and NEVER sign Broad.

Important Insurance Endorsements and How They Interact With Indemnity Agreements

- **Additional insured endorsements** allow the party you provide them to, to access your insurance and use it like their own. This leads to more claims and coverage even if you may not be at fault. Vs. the party suing you for coverage.
- **Primary Non Contributory Clauses-** These clauses make your insurance first in line to defend you and the party you are in contract with. Their insurance won't kick in until your insurance limits are 100% exhausted.
- **Waivers of subrogation** disallow your carrier to sue other third parties to recoup damages, even if those parties were partially at fault. We shouldn't issue these if you negotiate a "comparative fault" indemnity agreement, since parties should be chipping proportionally based on % responsibility for causing the claim.
- These endorsements may provide access greater than the indemnity agreement you are able to negotiate, so you may want to change the insurance requirements in your contract so that you aren't required to provide these endorsements to the other party.
- **Important Note:** You **MUST** get both of these from any subcontractor you use, to transfer their risk to them correctly.

General Liability

Construction Defect Claims

- **Construction defect claims** are often tendered directly to your insurance carrier through the additional insured. You may receive a lawsuit in the mail alleging defective construction.
- **Start your own investigation** by pulling your job files, designs, and contracts for the project. Tender the claim to your insurance carrier if they are unaware, and set up a time/date with your adjuster to go “walk” the project to see the defect hands on. Take photos and thorough notes. Forward everything to your agent so they can set up a thorough file on the claim.
- Construction defect claims most commonly settle out of court. The cost to litigate construction defect often makes settlement more efficient.
- **Differing Conditions**
 - Large claims are frequently caused by unexpected events at the job site that are encountered due to unforeseen circumstances or design issues
 - Differing condition clauses within your bid and contract will help you navigate the uncharted territory with the client without eating the cost
 - Any changes to scope of work or design need to be signed off by client and engineer/designer
- **When To Outsource**
 - Very frequently the largest construction defect claims we see are when a contractor couldn't find a subcontractor or for some reason tried to perform work in house that they weren't comfortable with. OR the employees pushed engineering/construction past normal boundaries to complete a job quicker. These are big red flags when completing a project so project managers should respond by slowing down and making sure the company isn't taking unnecessary risk to satisfy the client.

Reducing Your Subcontractor Risk

- **Prequalification Program for subs** will help reduce subcontractor risk by making sure we are dealing with professional, insured, bonded, licensed subcontractors who will handle their own claim activity.
- **Trade and Supplier References** - other satisfied clients
- **Dunns Score** from Dunn and Bradstreet
- **Job Inspections**- Ask to inspect a current job they are on
- Even the smallest work subcontracted can cause huge claims, so make sure ALL subs go through your prequal process and you have insurance/indemnity from ALL subs
- **Other Documentation To Get From Each Sub**
 - Copy of Contractor License and License Bond
 - Signed Subcontract for each project that indemnifies your company
 - Insurance Certs w/ Waivers and Additional Insured- CRITICAL
 - Change Orders- signed, dated, organized
 - Bid copies

Update documentation every project or as the policies renew! This is a continuous process. Insurance agents can provide training to your staff members.

A Crash Course in Human Resources

It is SOOO important to know what you don't know. HR lawsuits are now more common than general liability lawsuits and require separate insurance!

- Do an annual one hour training on sexual harassment with all employees - now a requirement in some states
- Don't split the HR role, or give the job to an office manager as default. You need an HR person per every 50 employees, a consultant for 25-50. Under 25 can consider in house but have the highest odds of EPLI claims! Hire a consultant.
- Any employee handling supervisory responsibilities needs a basic online human resource crash course available online for cheap. Especially if they are performing hiring or firing.
- Make sure you pay overtime/drive time in accordance w/ state laws. Do a wage and hour audit.
- Update your handbook *EVERY* year. Or just get a new template service and stick to it.
- Use thoroughly made job descriptions and job offer letters that clarify whether employees are exempt or eligible for OT
- Apply your decisions and policies to employees "equally". Judgement calls in HR get people in trouble. Rely on your handbook for guidance and if concerned ask a consultant.
- Securely store and regularly update employee files- encrypt the information. Don't keep physical files.
- Make sure that no verbal employment terms are made and that all employees have signed their job description, the handbook, their offer. Keep signatures and notes on any discussions in the employee file.
- Use a progressive discipline policy and thoroughly document to employee files. Ideally we have three good reasons to term an employee when we do have to do it.
- When hiring, NEVER ask sensitive questions and ALWAYS ask the same questions to ALL employees you are considering for the same position.
- Make sure your wages are equal among minority groups and for females vs. males when the quality of work or scope of position is the same.

Credit Risk and Surety Bonding

Most economists are predicting a slow but steady decline in the economy, be prepared!

- How do you decide which customers to extend credit to via unpaid purchases?
- Largest clients create the largest risks, and aren't always the most financially stable
- How do you track overdue invoices? - 30/60/90, certified letters and collections.
- Following lien procedures properly on every job is one of the only ways to protect yourself
- What is your bad debt ratio? - the ratio you "write off"? What was your worst one in the past?
- Do you tighten collection terms as you see the economy tighten?
- How do you decide if a project is above your qualifications or capacity?
- How do you use your line of credit? - Red flags if you see LOC use building up or are using it for operating expenses.
- Do you perform job costing?- This is the real key to a contractors profitability. Even the best contractors lose money on some of their projects they just make the losses small and infrequent.
- Change orders ALL need signatures
- Differing condition clauses also help
- Dunn & Bradstreet profiles are easily run on clients, subcontractors and material companies

Data Loss and Cyber Security

Frequent Losses Not Well Covered By Insurance- Risk Management is KEY

- Data can be lost due to a virus, hackers, ransomware, or just the computer blue screen of death
- Carbonite is a very cheap organization wide computer backup software that can get your computer running within a few hours on another machine.
- DON'T rely on "local backups" - redundant servers or cassettes
- The cloud is just as secure as your servers (or often more so)
- Make sure all computers have anti virus and are being updated regularly
- BUSINESS OWNERS LAPTOPS are the main culprit of data loss and theft. Don't forget yourself!
- Encrypt all important data and employee files (Adobe)
- Change passwords every 90 days or more frequently
- NEVER sign into key accounts (Banking, payroll, etc) on public or "unsecured" networks!

What to do when the S*IT hits the fan...

Managing construction defect losses or pollution related incidents

- Companies with an established investigation and claim handling process fare far better and will have lower claim costs
- Is everyone safe?
- Is there anything I can do to prevent further damage?
- Call agent, attorney, safety consultant
- Do we need to notify OSHA or are they on site already?
- Who will perform “clean up” or remediation?
- Documentation of your investigation is exceptionally important, the first 24-48 hours are key to thoroughly record all evidence and information regarding the incident.
 - Photos, witness statements, statements from police, fire, etc.
 - Use an attorney specific to the issue at hand not “general counsel”
- Pull out your job file to review subcontract agreements, indemnity, certificates/additional insureds, your contract, the bid copy, plan designs. Your insurance carrier will need all of this too.
- Notify your insurance carrier whenever you think an incident may lead to a lawsuit. Don't wait for the lawsuit itself.

Safety, OSHA, and Workers Compensation

There are tremendous safety resources available now, take advantage of them

- www.Clicksafety.com is cost effective and time effective to train employees on almost ANY safety topic. Can be done right on the jobsite with tablets
- You need a written safety manual and if it isn't at least 60 pages it probably isn't OSHA compliant. Almost all insurance agents offer safety programs fee, or you can find them online for \$50-500
- Key areas of concern:
 - Heat Illness and Injury
 - Fall Protection
 - Supervisor Training - OSHA 10 and 30
 - HazWoper training includes managing and understanding hazardous materials safety and being a first responder to an incident.
 - Incident/Accident Investigation process and forms
 - OSHA 300 logs should be posted NOW and up for two months in a public place
 - Equipment operation
 - Utilizing ladders and scaffolding safely
 - Utilizing personal protective equipment

Final Comments and Additional Help Available

- Your gut instinct is often right, don't work with situations or clients you don't feel comfortable with
- Read EVERY SINGLE contract. There is a reason for the "fine print. If someone else preps the contract, it probably isn't in your favor.
- Be careful anytime you are doing something outside your core competency



Red Cedar Insurance Agency would be happy to have a risk consultant come out to strategize on your risks and has materials available for almost all of the risks presented in these slides. Please don't hesitate to reach out to us to see if we may be of service.

We wish you and your company a safe and profitable 2019

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