

# Managing Risk



STARKWEATHER & SHEPLEY  
INSURANCE BROKERAGE, INC.

Insurance... Solutions... Integrity... since 1879.



Risk Management

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## Starkweather and Shepley Launch Newsletter

As the new president of Starkweather & Shepley, I would like to welcome you to our inaugural edition of *Managing Risk*.

Every quarter, our newsletter will bring you:

- ✓ Timely information on emerging insurance issues
- ✓ “Best Practice” advice to assist you in managing risk
- ✓ Updates on events and seminars offered exclusively by Starkweather & Shepley

Although the global economy will prove challenging for all of us in 2009, our firm greets this new year with tremendous excitement and pride. Starkweather & Shepley is very proud to be celebrating our 130th anniversary and sincerely thank all our clients for their continued support and trust.

We know we are very fortunate that our staff of insurance professionals is so dedicated to meeting and exceeding your expectations. Recently, *Providence Business News* named our firm as one of “Rhode Island’s Top Places to Work in

2008.” Additionally, *Business Insurance* magazine has again named us to their Top 100 U.S. Insurance Brokerages list. Clearly, Starkweather & Shepley has a winning combination of providing customer focused solutions to our clients and retaining happy, productive, and professional employees. This simple formula should lead to our continued success.

To stay an industry leader and remain your trusted advisor, we must offer you more value. We trust these quarterly *Managing Risk* newsletters will prove useful. Also, please visit our recently updated website [www.starshp.com](http://www.starshp.com). Every day, it seems something new is being added to this vital access point — so stay tuned for more! Watch for information on our newly formulated Starkweather & Shepley “best practices” lecture series; updates on our group captive initiative; and other strategic programs

designed to provide the greatest value available for all your risk management and insurance needs.

We are confident Starkweather & Shepley will remain and grow as an industry leader and a trusted resource to our expanding community because of our...

- ✓ Intense customer focus
- ✓ Staff’s tremendous intellectual capital
- ✓ Healthy partnership with our leading insurance carriers
- ✓ Commitment to Excellence, Integrity, and Innovation

Thank you again for your support.  
Wishing you a happy, healthy and prosperous 2009!

**Nat**

Nat Calamis  
President & CEO

## Risk Note

Employers’ first aid requirements differ from sector to sector and from workplace to workplace. You can use the OSHA 300 log, OSHA 301 forms and your workers’ compensation carrier’s reports to help identify first aid needs. The Bureau of Labor Statistics can also provide insight into the risks particular to your industry ([www.bls.gov/iif](http://www.bls.gov/iif)).

To set up your program, you can use the guidelines in OSHA’s “Best Practices Guide: Fundamentals of a Workplace First-Aid Program,” at [www.osha.gov/Publications/OSHA3317first-aid.pdf](http://www.osha.gov/Publications/OSHA3317first-aid.pdf).

The guide details the four primary components of a workplace first-aid program:

- Identifying and assessing workplace risks
- Designing a program that is specific to the worksite and that complies with OSHA requirements
- Developing written policies and teaching workers about the program
- Evaluating and modifying the program to keep it current, including regular assessment of the first-aid training course.





# Contractor or Employee? That Is The Question

Hiring someone as an independent contractor can save businesses significant sums by eliminating workers' compensation insurance, employee benefits and payroll taxes. But complex rules determine whether someone is an employee or a contractor. Getting them wrong can have serious consequences – back taxes, penalties, fines, lawsuits and damage to morale, to name just a few.



**D**iscerning the difference between an independent contractor and employee can be a complex and imprecise art, especially when telecommuting blurs the use of location as an indicator of employment status. The IRS has a comprehensive list of factors that it uses to determine a worker's status. Many states have additional requirements, which are supplemented by numerous legal rulings.

Generally speaking, the more independence workers have, the more likely they can be classified as independent contractors. Therefore, employers should also look at whether the worker advertises his services to others, employs assistants or purchases his own workers' comp insurance. You can also fill out an IRS form SS-8 to determine worker status. ■

Employee	Not
Worker must obey instructions concerning when or how to perform the job.	Worker responsible for the outcome of the job and can determine how it is to be done.
Company provides training.	Worker may be licensed by a state board; may have invested considerable sums in training.
The job is "integrated," or central to the company's operations — the more integrated, the more likely the worker will be considered an employee.	The job is not necessarily integrated to the company's operations.
Services must be performed by a particular person.	Work can be performed by anyone.
The company hires, supervises or pays a worker's assistants.	Worker can hire assistants and is responsible for their pay.
Worker has an ongoing relationship with the company.	Worker advertises or otherwise makes his/her services available to the general public.
Company sets the work hours.	Worker can set his/her own work hours.
Company requires full time work at its business.	Worker can work for more than one company at the same time.
Company controls where the work is performed.	Worker determines where the work is performed.
Company determines the order in which tasks are to be done.	Worker controls task order.
Company requires oral or written reports.	
Worker receives payment by hour, week or month.	Independent contractors are usually paid on a per job or commission basis.
Company provides tools and materials.	Worker has made a significant investment in tools or facilities.
Company pays travel/ business expenses.	Worker can realize a profit or loss from a job.
Company can discharge a worker for reasons other than not meeting a contract's terms.	Worker has a contract with the company.
Worker can usually quit without liability for failure to complete a job.	Worker liable for completing a job according to contract.



# Controlling Cyber Risk and Your Budget

The most recent survey by the Computer Security Institute found that only 29 percent of companies purchased cyber-risk insurance policies. The low numbers reflect misunderstanding of the risks involved, overly complex offerings from many insurers and premiums that can seem prohibitive. Knowledgeable brokers can help insurance buyers navigate this important area of risk management, say experts.

**P**ractically every company that uses a computer faces cyber risks of one sort or another. But cyber insurance is designed to do far more than just indemnify a company for damage done to its computer systems.

Policies are nonstandard and vary from insurer to insurer. They can provide business interruption insurance if the data losses cause a company to suspend operations. They can cover liability-related costs such as defense costs, settlements, judgments and sometimes punitive damages incurred by a company stemming from its computer systems or online presence. These include breach of privacy due to theft of data (such as credit card, financial or health-related data); transmission of a computer virus or other problems resulting from a computer attack that cause financial loss to third parties; a security failure that causes network systems to be unavailable to third parties; and allegations of copyright or trademark infringement, libel, slander, defamation or other “media” activities on the company’s Web site, or by company employees.

In addition, many policies provide insureds access to an identity theft call center that will assist customers or employees if their personal information is stolen from your systems. Some policies even offer cyber-extortion endorsements that cover the “settlement” of an extortion threat against a company’s network, as well as the cost of hiring a security firm to track down and negotiate with blackmailers.

So why are so many companies overlooking the dangers posed by cyber risk and the solutions offered by well-tailored insurance policies?

Mark Greisiger, the founder and president of computer security company NetDiligence, works with almost all major underwriters to assess companies’ risks and recommend solutions. He believes that the market dynamic is changing and that interest in cyber policies is growing rapidly. At the same time, insurers are rushing in to compete in this marketplace, causing prices to fall and policies to become more standardized and a better value.

“Competition is getting fierce and we’re now in a soft market that is great for buyers,” he says. “However, the greater number of options available means that it is more fundamental than ever that your broker has detailed knowledge of the market. Your broker can make a huge difference,” says Greisiger. “Policies can be complex, and the nuances of a policy can make them a much better fit for some companies than others,” he says.

The level of protection you need is based not so much on the size of your company as on its activities. “Even if you are tiny you can still be sued, but if you are not engaged in ecommerce and your networks do not face customers, you might want to self-insure,” Greisiger says.

Many companies fail to accurately identify their vulnerabilities because risk managers do not work closely enough with their IT departments to assess the risk and potential solutions. Another problem that risk managers run into is that treasurers still see cyber risk insurance as a “luxury cost issue,” Greisiger says. However, the increasing publicity given to class action lawsuits stemming from the loss of electronic data is changing that perception. For more information on cyber risk insurance, please contact us. ■



**PRODUCT**—continued from Page 4

## The cons

Because product liability wrap-ups are still relatively new, the concept often works better in theory than in practice. Arranging the proper coverage can be difficult to manage. And in the end, you might not save money if your suppliers’ underwriters do not understand the concept. If your suppliers believe they need to retain their own product liability coverage, they may pass these costs on to you, so you in effect will be paying twice for the same coverage.

For now, you might be wise to consider a product wrap-up like a DVD player — when they were first introduced, buying one made sense for only a few individuals. But as they became more popular, manufacturers added features, dropped prices and made them accessible to many. Until product liability wrap-ups become more common, you will want to evaluate a product liability wrap-up’s coverage and costs against buying these coverages individually. Please contact us for more assistance in evaluating your product liability coverage needs. ■

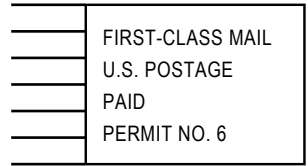
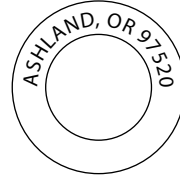




Here's your issue of *Managing Risk* from:



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## Product Liability: It's a Wrap

Wrap-up insurance has long been popular in the construction sector. Now wrap-up insurance is making inroads in the manufacturing and distribution sectors. Does a product liability wrap-up make sense for your firm? Here are some of the pros and cons.



**P**roponents of product liability wrap-ups say they can help retailers, importers, wholesalers, distributors and value-added manufacturers ensure that their product liability risks are predictable and manageable. But critics say that unless such owner-controlled insurance policies (OCIPs) are closely checked and administered, the owner can end up paying more for insurance — once for its direct liability risks and again for the suppliers' insurance.

*Rupp's Insurance & Risk Management Glossary* defines a wrap-up or OCIP as "Insurance... arranged by the owner... in such a way that all interests involved... are combined and insured under one policy with a single insurer. Generally, it includes workers' compensation, general liability, umbrella liability, and builders' risk insurance [for a construction wrap-up]; occasionally, it is only workers' compensation. It is designed to reduce the project's overall insurance costs and provide a coordinated project

safety program."

Like a construction wrap-up, a product liability wrap-up is designed to meet the challenges of insuring a business that has complex relationships with its suppliers. While a construction wrap-up usually covers workers' compensation, general liability, umbrella liability and builders' risk, a product liability wrap-up might include product recall and product recall liability coverage, along with coverage for environmental liability, errors and omissions, crime and supply-chain disruption.

Foreign suppliers are often beyond the effective reach of the U.S. courts, dramatically increasing the distributor's risk of product liability claims. Further, many foreign suppliers don't fully understand the North American environment for product liability claims and often fail to purchase product liability insurance. Even if they do have insurance in place, they may have inadequate limits or policies with excessive limitations. The wrap-up helps protect

the U.S. distributor by providing coverage for both the U.S. distributor and its designated foreign suppliers with one aggregate limit against product liability claims arising from the sale of foreign-made products.

A wrap-up can also eliminate some of the administrative hassles of a complex insurance program. U.S. distributors can find it hard to obtain valid certificates of insurance from their foreign suppliers, which might only provide a certificate with an expiration date. Securing a renewal certificate can be difficult if the distributor is no longer buying from the supplier and impossible if the supplier is out of business.

The product liability wrap-up is designed to solve these problems. Rather than requiring foreign suppliers to provide coverage — which might not be consistent — a product liability wrap-up provides distributors with coverage consistent with U.S. terms and conditions.