

MARSH

Risk Management Insurance Seminar

The State of Oklahoma
Department of Central Services / Risk Management



Marsh USA Inc.
March 10, 2011

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Risk Management Insurance Seminar

Today's Agenda

- The Purpose of this Presentation
- Marsh & Marsh Oklahoma
- Insurance Marketplace Update
- The State of Oklahoma's Insurance Programs
- Directors' & Officers' Liability Insurance
- Educators' Legal Liability Insurance
- Employment Practices Liability Insurance
- Public Employee Dishonesty (Crime) Insurance
- Property Insurance
- Fine Arts Insurance
- Additional Insurance Programs
- Questions & Answer

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The Purpose of this Presentation

The purpose of this presentation is to provide you with a basic overview of the roles and responsibilities of your insurance broker, Marsh Oklahoma, and the various insurance programs we handle on behalf of the State of Oklahoma and the Department of Central Services / Risk Management.

***Our primary mission is to help you
—the State of Oklahoma—
manage risk.***



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About Marsh & Marsh Oklahoma and Our Role



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About Marsh USA & Marsh Oklahoma

- Marsh is a world leader in delivering risk and insurance services and solutions to its clients.
- There are seven key responsibilities that Marsh Oklahoma undertakes in support of the State's Risk Management Process:
 1. Insurance Marketing & Placement
 2. Policy Administration
 3. Risk Analysis and Control
 4. Evaluation of Third Party Service Providers
 5. Claims Services
 6. Program Performance Report
 7. Additional Requirements



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Insurance Marketplace Update



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Insurance Marketplace Update

- In many ways, the North American insurance market in 2010 mirrored 2009. Competition among insurers remained intense, capacity was abundant, and there were relatively few insured catastrophe losses. The end result was a generally stable market in 2010—and one that is poised to be so again in 2011.
- Although insurers generally manage very conservative investment portfolios, the global financial crisis is a reminder of how volatile the investment environment can be. During 2010, many insurers took additional steps to “de-risk” their investment portfolios by reducing their exposure to more volatile asset classes. Despite the overall turnaround in investment performance, the P/C industry will continue to face near-term investment challenges as historically low interest rates continue to produce lower yields. In turn, insurers will be forced to focus on underwriting profitability.
- The U.S. P/C industry faces challenges in 2011. Although the financial markets stabilized in 2010 and investment returns generally improved, they likely will be modest, if not flat, in 2011. Investment earnings cannot be viewed, as they were in the past, as a reliable source of significant earnings. Insurers will need to be extremely disciplined in underwriting if they are to achieve risk-appropriate rates. Underwriting profitability will be crucial to maintaining financial strength. This will be the biggest challenge for insurers in 2011 as broad-based hardening of rates is not expected in the near term.
- Overall, the P/C insurance industry appears strong.



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Summary of Insurance Programs

Coverage Type	Policy Term	Insurance Company	Limit
Foreign Liability	5-01-08 to 5-01-11	ACE American Ins. Co.	GL \$1,000,000 Occ Auto \$1,000,000 CSL
Public Employees Dishonesty	7-01-08 to 7-01-11	Fidelity & Deposit Ins. Co. (Zurich)	Varies by Agency \$50,000 Basic Limit
Aviation	7-01-10 to 7-01-11	National Union Fire	\$1,000,000 CSL
All Risk Property	8-01-10 to 8-01-11	Various Carriers	\$1,000,000,000 Loss Limit
Fine Arts	8-01-10 to 8-01-11	Lloyd's of London	\$750,000,000 Each Event
Auto Physical Damage	8-13-08 to 8-13-11	Great American Ins. Co.	Various
Out of State Liability	9-24-10 to 9-24-11	Illinois Union Ins. (ACE)	\$5,000,000 GL/Auto
Directors & Officers and Empl. Practices Liability	10-30-10 to 10-30-11	National Union Fire ACE American Ins. Co.	\$5MM/\$35MM Occ/Aggr \$15MM Excess
Educators Legal Liability and Empl. Practices Liab.	10-30-10 to 10-30-11	National Union Fire ACE American Ins. Co.	\$5MM/\$35MM Occ/Aggr \$15MM Excess

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Summary of Directors' & Officers' Liability Insurance



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Summary of Directors' & Officers' Liability Insurance

Key features of this insurance:

- Covers State of Oklahoma (Including it's Agencies), Directors, Officers, Trustees, Employees and Volunteers
- \$5MM per Claim
- \$50MM Aggregate limit of liability with tie-in of limits between D&O and ELL policy
- Retention per claim per State entity based on election, with Risk Management paying the difference for a total retention of \$250,000
- Coverage **not** provided for Defense Costs



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Summary of Directors' & Officers' Liability Insurance / Coverage Overview

Elements of Coverage for D&O

- Provides coverage to Directors and Officers in the event of allegations citing errors, omissions or breach of duty within the scope of their duties
- Provides coverage to State of Oklahoma for reimbursement of indemnified amounts
- Provides “entity” coverage to the State of OK
- Coverage is extended to include Employment Practices Allegations



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Summary of Directors' & Officers' Liability Insurance / Policy Definitions

Key Policy Definitions

Insured(s), or Director, or Officer or Trustee means:

- Any past, present or future duly elected or appointed directors, officers or trustees and employees of the Organization. Coverage will automatically apply to all new directors, officers, trustees and employees after the inception date of this policy;
- The Organization - (State of Oklahoma, including it's Agencies)



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Summary of Directors' & Officers' Liability Insurance / Policy Definitions

Definition of “Loss” includes:

- Damages, judgments, and settlements

Definition of “Loss” does NOT include:

- defense costs,
- civil or criminal fines or penalties imposed by law,
- punitive or exemplary damages, the multiplied portion of multiplied damages,
- taxes,
- any amount for which the Insureds are not financially liable, or which are without legal recourse to the Insureds,
- or matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.



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Summary of Directors' & Officers' Liability Insurance / Policy Definitions

“Wrongful Act” means:

Any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Directors or Officers or Trustees or Insured of the Organization, or the Organization itself, or any matter claimed against the Directors or Officers or Trustees or Insureds, solely by reason of their status in such capacity.

“Wrongful act” shall also include:

- Discrimination
- Sexual Harassment
- Libel
- Slander
- Defamation
- Employment Practices Allegation



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Summary of Directors' & Officers' Liability Insurance / Policy Exclusions

Key Policy Exclusions

- Claims covered under the Governmental Tort Claims Act
- Unlawful Gain or Profit
- Criminal Misconduct
- Deliberately Fraudulent Acts
- Insured vs. Insured
- Bodily Injury or Property Damage
- Medical Malpractice
- Sexual Misconduct & Child Abuse



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Summary of Directors' & Officers Liability Insurance / Policy Exclusions

- Contractual Liability
- Employee Retirement Income Security Act (ERISA); Fair Labor Standards Act (FLSA); National Labor Relations Act (NLRA); Consolidated Omnibus Budget Reconciliation Act (COBRA); Worker Adjustment and Retraining Notification Act (WARN); and, Occupational Safety and Health Administration (OSHA)
- Absolute Wrongful Imprisonment Exclusion
- Absolute Affirmative Action Exclusion
- Pollution



Summary of Educators' Legal Liability Insurance



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Summary of Educators' Legal Liability Insurance

Key Features of this insurance:

- Covers State of Oklahoma Universities, Colleges, and Board of Regents
- \$5MM per Claim
- \$50MM Aggregate limit of liability with tie-in of limits between D&O and ELL policy
- Retention per claim per State entity based on election, with Risk Management paying the difference for a total retention of \$250,000
- Coverage **not** provided for Defense Costs



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Summary of Educators' Legal Liability Insurance / Elements of Coverage

Elements of Coverage for Educators Legal Liability

- Provides coverage to Directors and Officers in the event of allegations citing errors, omissions or breach of duty within the scope of their duties
- Provides coverage for non-indemnifiable events
- Provides coverage to State of Oklahoma for reimbursement of indemnified amounts
- Provides “entity” coverage to the State of OK and Colleges, Universities, and Board of Regents
- Coverage is extended to include Employment Practices Allegations



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Summary of Educators' Legal Liability Insurance / Key Policy Definitions

Key Policy Definitions

Insured(s), or Director, or Officer or Trustee means:

- Any past, present or future duly elected or appointed directors, officers or trustees and employees of the Organization. Coverage will automatically apply to all new directors, officers, trustees and employees after the inception date of this policy;
- Student Teachers, Faculty Aides, Students in Supervised Internships, Teaching Assistant, President, Regent, Chancellor, Provost, Risk Manager, and Volunteers;
- The Organization (State of Oklahoma and **scheduled** Colleges, Universities and Board of Regents)



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Summary of Educators' Legal Liability Insurance / Key Policy Definitions

Definition of “Loss” includes:

- Damages, judgments, and settlements

Definition of “Loss” does NOT include:

- defense costs,
- civil or criminal fines or penalties imposed by law,
- punitive or exemplary damages, the multiplied portion of multiplied damages,
- taxes,
- any amount for which the Insureds are not financially liable, or which are without legal recourse to the Insureds,
- matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.



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Summary of Educators' Legal Liability Insurance / Key Policy Definitions

“Wrongful Act” means:

Any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Directors or Officers or Trustees or Insured of the Organization, or the Organization itself, or any matter claimed against the Directors or Officers or Trustees or Insureds, solely by reason of their status in such capacity.



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Summary of Educators' Legal Liability Insurance

“Wrongful act” includes:

- Discrimination
- Sexual Harassment
- Libel
- Slander
- Defamation
- Employment Practices Allegation
- Educational Malpractice
- Denial/Removal of Tenure
- Failure to Educate
- Negligent Academic Guidance / Counseling
- Defect in the Tenure or Peer Review Process
- Failure to grant tenure
- Non-employment discrimination
- Plagiarism



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Summary of Educators' Legal Liability Insurance / Exclusions

Key Policy Exclusions include:

- Claims covered under the Governmental Tort Claims Act
- Unlawful Gain or Profit
- Criminal Misconduct
- Deliberately Fraudulent Acts
- Insured vs. Insured
- Bodily Injury or Property Damage
- Medical Malpractice
- Sexual Misconduct & Child Abuse
- Contractual Liability
- Employee Retirement Income Security Act (ERISA); Fair Labor Standards Act (FLSA); National Labor Relations Act (NLRA); Consolidated Omnibus Budget Reconciliation Act (COBRA); Worker Adjustment and Retraining Notification Act (WARN); and, Occupational Safety and Health Administration (OSHA)



Summary of Employment Practices Liability Insurance



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Summary of Employment Practices Liability Insurance

Key Policy Definition

Employment Practices Violations means:

- **Wrongful dismissal, discharge or termination of employment**
- **Harassment (including sexual harassment)**
- **Discrimination (age, gender, race, color, national origin, religion, sexual orientation, pregnancy or disability)**
- **Retaliation**
- **Employment-related misrepresentation to an employee**
- **Employment-related libel, slander, humiliation, defamation or invasion of privacy**
- **Wrongful failure to employ or promote.**
- **Wrongful deprivation of career opportunity, demotion or negligent employee evaluation**
- **Wrongful discipline**
- **Failure to grant tenure or practice privileges**



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Summary of Employment Practices Liability Insurance

Applies to both Directors' & Officers' and Educators' Legal Liability

- EEOC continues to dedicate more resources and take an aggressive stance in claim investigation and settlement negotiations through 2010
- For FY 2010, the EEOC announced it received 99,922 charges which is the highest in the history of the agency and is in part continuing evidence of the effect of the recession.
- For the first time ever, retaliation charges surpassed those for race to top the list of most frequently filed charges.

EEOC reporting at the first knowledge or Notice of Charge to Risk Management for reporting under policies to protect coverage is critical!



D&O and ELL Notice / Claims Reporting Provisions



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D&O and ELL / Claims Reporting Provisions

Duties in the Event of Loss

If a Department Manager, the Human Resources Manager, Attorney General's Office or General Counsel **becomes aware of a claim or circumstance that could give rise to a Claim, they should notify Risk Management immediately** of the claim and/or circumstances :

- Notify Risk Management as soon as possible;
- Cooperate in the investigation of any claim.

The Claim or Report of circumstances should include full details as to dates, persons and/or entities involved, along with the demand letter, a copy of the lawsuit, or a brief description of the allegations.



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D&O and ELL / Claims Reporting Provisions

Duties in the Event of Loss (continued)

- Risk Management will coordinate initial contact with defense counsel and the insurer.
- Requests by the insurance company and/or local counsel for additional information related to open claims shall be directed to Risk Management.
- Risk Management will notify the insurance company of any change in defense counsel on open claims



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D&O and ELL / Claims Reporting Provisions

Settlement Conferences

Upon receipt of notice of a conference the same notification requirements to Risk Management apply as stated above, however: the insurance company will:

- Assign a claim file number.
- Confirm the receipt of the Claim or circumstance in writing to State of Oklahoma Risk Management Division and Marsh USA, Inc.
- Issue a coverage opinion letter outlining the policy provisions based on the preliminary known facts of the reported Claim. This letter will be directed to Risk Management for their review of coverage determination by insurer.



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D&O and ELL / Claims Reporting Provisions

Consent Clause

The Insureds shall not admit or assume any liability, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the Insurer.



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D&O and ELL / Claims Reporting Provisions

Cooperation Clause

The insurer shall have the right to effectively associate with the Insureds in the defense of any Claim that appears reasonably likely to involve the Insurer, including but not limited to negotiating a settlement. The Insureds shall give the Insurer full cooperation and such information as it may reasonably require.

- If Insureds fail to cooperate or do not consent to an early settlement opportunity the Insureds may have jeopardized their coverage under the policy or limited the amount of coverage available to the amount the claim could have been settled for earlier. Per the promulgated rules, Risk Management is to be involved in all settlement negotiations.
- If Insureds settle a claim without first notifying Risk Management, they may have jeopardized this coverage.



Summary of Public Employee Dishonesty (Crime) Insurance



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Summary of Public Employee Dishonesty (Crime) Insurance

- Pays for loss of or damage to money, securities, and other property resulting directly from theft committed by each employee, whether identified or not, acting alone or in collusion with other persons.
- ***Fulfills bond requirements as stated in the Oklahoma Statute Title 74 O.S. § 85.29***
- \$50,000 Limit per Employee all State Departments, Agencies, Institutions, Commissions, Authorities and other Bodies of Govt.
- \$1,000,000 Computer Fraud – pays for loss or damage to money, securities or other property resulting from the use of any computer to fraudulently cause a transfer of that property from inside the Insured “premises” or “banking premises” to a person outside the premises or to a place outside the “premises”.
- \$5,000,000 Funds Transfer Fraud – pays for loss of funds resulting directly from a “fraudulent instruction” directing a financial institution to transfer, pay or deliver “funds” from your “transfer account”.
- \$5,000 Deductible per Occurrence



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Summary of Public Employee Dishonesty (Crime) Insurance

Duties in the Event of Loss

After you discover a situation that may result in loss of or damage to money, securities or other property you must:

- Notify Risk Management as soon as possible;
- Submit to examination under oath if requested and give a signed statement of your answers;
- Provide a detailed, sworn proof of loss within 120 days;
- Cooperate in the investigation of any claim.

The Claim or Report of circumstances should include full details as to dates, persons and/or entities involved, along with the demand letter, a copy of the lawsuit, or a brief description of the allegations.



Summary of Property Insurance Program



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Summary of Property Insurance Program

- Covers loss or damage to property **reported** to Risk Management
- **\$1,000,000,000** Loss Limit per Occurrence
- **Deductible** varies by agency
- Applicable **sublimits**:
 - \$25,000,000 Accounts Receivable
 - \$150,000,000 Loss of Income (limited to those agencies reporting values)
 - \$15,000,000 Tuition and Fees (limited to values reported by specific agencies)
 - \$250,000,000 Each Occurrence and Annual Aggregate Earth Movement
 - \$250,000,000 Each Occurrence and Annual Aggregate Flood; except
 - \$100,000,000 Each Occurrence and Annual Aggregate Flood for Properties located in the 100 Year Flood Zone as defined by FEMA



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Summary of Property Insurance Program

▪ Sublimits - continued:

- \$100,000,000 Contingent Liability for Building Laws – Demolition & Cost of Construction
- \$100,000,000 Any One Accident – Equipment Breakdown
- \$20,000,000 Debris Removal – or 25% of the loss whichever is greater
- \$25,000,000 Extra Expense
- \$25,000,000 Expediting Expense
- \$5,000,000 Fungus Clean-Up or Removal Extra Expense (Annual Aggregate)
- \$1,000,000 Asbestos Clean-Up or Removal Extra Expense (Annual Aggregate)
- \$50,000,000 Errors and Omissions
- \$2,500,000 Plants, Trees, & Shrubs



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Summary of Property Insurance Program

▪ Sublimits - continued:

- \$5,000,000 Fairway, Greens & Tees if Scheduled, but limited to \$1,000,000 is not scheduled
- \$50,000,000 Valuable Papers & Records
- \$25,000,000 Transit
- \$30,000,000 Service Interruption, Property Damage and Time Element Combined including lack of phone service
- \$25,000,000 Decontamination Expense
- \$10,000,000 Professional Fees
- \$100,000 Fine Arts (including Library Books) not covered under the separate Specimen Policy with Lloyd's of London
- \$250,000 Land and Water Contaminants or Pollutant Cleanup, Removal and Disposal (Annual Aggregate)
- \$25,000,000 Builders Risk including Soft Cost and Delay in Start Up at Non-existing Locations and/or Locations not noted on the Statement of Values



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Summary of Property Insurance Program

- **Sublimits - continued:**

- \$25,000,000 Builders Risk and Renovations including Soft Cost and Delay in Start Up at Existing Locations and/or Locations noted on the Statement of Values
- \$100,000,000 Leasehold Interest
- \$100,000,000 Rental Insurance & Rental Value Combined
- \$500,000 Animals held for Research or Teaching
- \$100,000,000 Newly Acquired Locations, except \$25,000,000 for Builder's Risk and Renovations including Soft Cost and Delay in Start Up
- \$10,000,000 Contingent Business Interruption



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Summary of Property Insurance Program

▪ Exclusions:

- Land except for cost of restoring land improvements consisting of landscape gardening, drainage, roadways if scheduled on Statement of Values
- Water, except water which is contained within any type of tank, piping system or other process equipment
- Money and Securities
- Growing Crops, standing timber or Drying Crops
- Aircraft, watercraft, satellites, and motor vehicles licensed for road use
- Waterborne shipments via the Panama Canal, and to and from Puerto Rico, the Virgin Islands, Hawaii and Alaska
- Electronic Data Limitation
- Electronic Data Recognition Exclusion
- Fungi Exclusion – (mold)



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Summary of Property Insurance Program

▪ Exclusions:

- Spacecraft launch vehicles, launch sites, and components
- Underground mines, caverns, tunnels and any property contained therein, ***except this exclusion does not apply to pedestrian tunnels and walkways or the following items per schedule on file: waterlines, sewer lines, fiber optic lines, electrical lines or cable lines whether above or below the ground***
- Nuclear Power Plants
- Offshore Property and Offshore Drilling and production Rigs



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Summary of Property Insurance Program

- **Claim Reporting:**

Report any and all claims to Risk Management **immediately** whether or not you believe it will exceed your deductible.



Summary of Fine Arts Insurance Program



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Summary of Fine Arts Insurance Program

- Covers **fine arts and collectible objects of every description** including but not limited to paintings, drawings, prints, rare books and manuscripts, rugs, tapestries, etchings, photographs, numismatic objects, jewelry, sculpture, ceramics, video artwork and other bonafide works of art, or rarity, historic value, or artistic merit reported to Risk Management.
- Limits:
 - \$ **750,000,000** Any one Event
 - \$ 10,000,000 Transit Limit Worldwide
 - \$ 100,000,000 Certified Terrorism
 - \$ 100,000,000 Working Libraries (Library Books)
- **Deductible: Nil**



Additional Insurance Programs



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Additional Insurance Programs

- Automobile Physical Damage Insurance Coverage
- Outside of State Liability Insurance Coverage
- Foreign Liability Insurance Coverage
- Aircraft Hull & Liability Insurance Coverage

Please contact Risk Management for additional information.



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Additional Insurance Programs

Automobile Physical Damage Insurance Coverage

Provides for risk of direct physical loss or damage to **scheduled** state owned private passenger vehicles, buses, trailers, and equipment.

Deductible:

- 3% of vehicle value, subject to a minimum of \$2,500 and maximum of \$5,000 for vehicles valued at \$25,000 and less;
- 5% of vehicle value, subject to a minimum of \$5,000 for vehicles valued at \$25,001 and over;
- \$50,000 per Occurrence Aggregate applies to wind and/or hail (including tornado).

Valuation:

- Replacement cost for vehicle models less than 10 years
- Actual Cash Value for all vehicle models 10 years and older



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Additional Insurance Programs

Outside of State Liability Insurance Coverage

Public Entity General Liability and Automobile Liability for State employees while *traveling outside of the State of Oklahoma* for business purposes

Coverage provided for damages resulting from Bodily Injury or Property Damage to which insurance applies while outside the State of Oklahoma

Limits:

- \$5,000,000 Each Occurrence General Liability / Auto Liability
- \$5,000,000 Annual Aggregate General Liability / Auto Liability

Deductible:

- \$100,000 Self Insured Retention



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Additional Insurance Programs

Foreign Liability Insurance Coverage

Coverage Territory: Worldwide excluding the United States of America (including its territories and possessions), Iraq, Puerto Rico and Canada and excludes any country or jurisdiction which is a subject of trade or economic sanctions imposed by laws or regulations of the USA.

Foreign General Liability and Foreign Contingent Automobile Liability

Executive Assistance Services (including Repatriation) provides personal assistance services 24 hours a day, seven days a week anywhere in the world, to help employees who travel overseas with medical, legal, and/or personal emergencies.

Condition – No more than 5 employees may travel together on the same flight.



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Additional Insurance Programs

Aircraft Hull & Liability Insurance Coverage

- Provides coverage for Bodily Injury, Property Damage and Passenger Bodily Injury the Insured becomes legally obligated to pay as damages caused by an Occurrence and arising out of the ownership, maintenance or use of a covered Aircraft.
- Provides coverage for scheduled aircraft owned by the State of Oklahoma and/or for use in the U.S. Air Force Introductory Flight Training/Navigator (IFT/NIFT) Program.
- Limits Inside the State of Oklahoma are subject to limits allowed under Oklahoma Statute, Title 51, Section 151 not to exceed the GTCA of \$25,000 Property Damage, \$175,000 per claimant for Bodily Injury and \$1,000,000 for any number of claims arising out of a single occurrence or accident.
- Provides coverage for scheduled aircraft while flown outside the State of Oklahoma. Higher limits purchased of \$5,000,000 Each Occurrence with \$175,000 Passenger Liability.



Conclusion

Questions & Answers



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Thank you!



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