

to be best in a  
point of view.  
**Insurance** [i  
insuring or a  
against loss  
protection a

NYSICA, ALBANY

May 10, 2018

# Third Party Risk Management



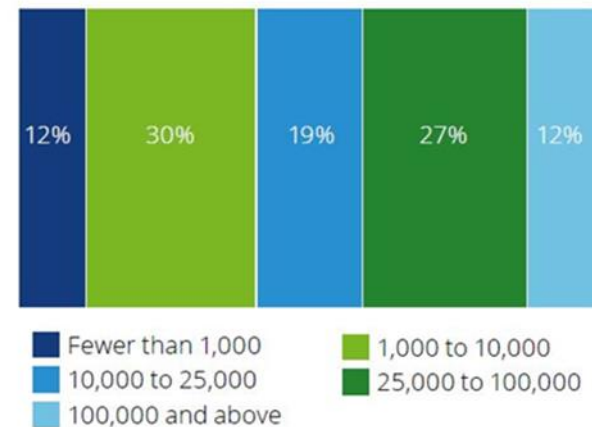
# Group Exercise

- Do you own or rent your home/apartment?
- In the last 12 months, have you had plumbing / heating / painting / renovations done?
- Did you sign a contract for the work?
- Did you ask if the provider had insurance?
- Did you actually receive and review the insurance certificate?

# Deloitte's 2016 Global Outsourcing Survey

- Broadening their approach to outsourcing – more than cost cutting.
- Redefining ways to enter into outsourcing relationships and manage the ensuing risks.
- Changing how they manage outsourcing relationships to maximize value.

**Figure 2. Total employee population of surveyed organizations**



# Agenda

- Contracting Third Parties
- Assessing Risk
- Risk Transfer Mechanisms
- Compliance & Oversight
- Platforms & Technology

# Today's Objective

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Explore the risks and exposures associated with contracting Third Parties

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Review best practices to assess, transfer/mitigate and manage ongoing risk

# Internal Control

"... defined as a process ... to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting and compliance."

## Standards for Internal Control in New York State Government

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller



March 2016

# Types of Third Parties

- Trades
- Service Providers
- Construction
- Consultants
- Vendors
- Professional Services
- Partners

## Benefits of Outsourcing

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Achievement of Strategic Goals

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Access to Expertise or Specialties

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Advanced Technology, Systems or Platforms

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Simplicity and Ease

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Manage Headcounts

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Manage Payroll & Expenses

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## Risk & Exposure

Outsourcing does not diminish your responsibility to ensure the Third Party activities are conducted in a manner acceptable to laws, regulation and your internal policies.



# 2018 ABC Study

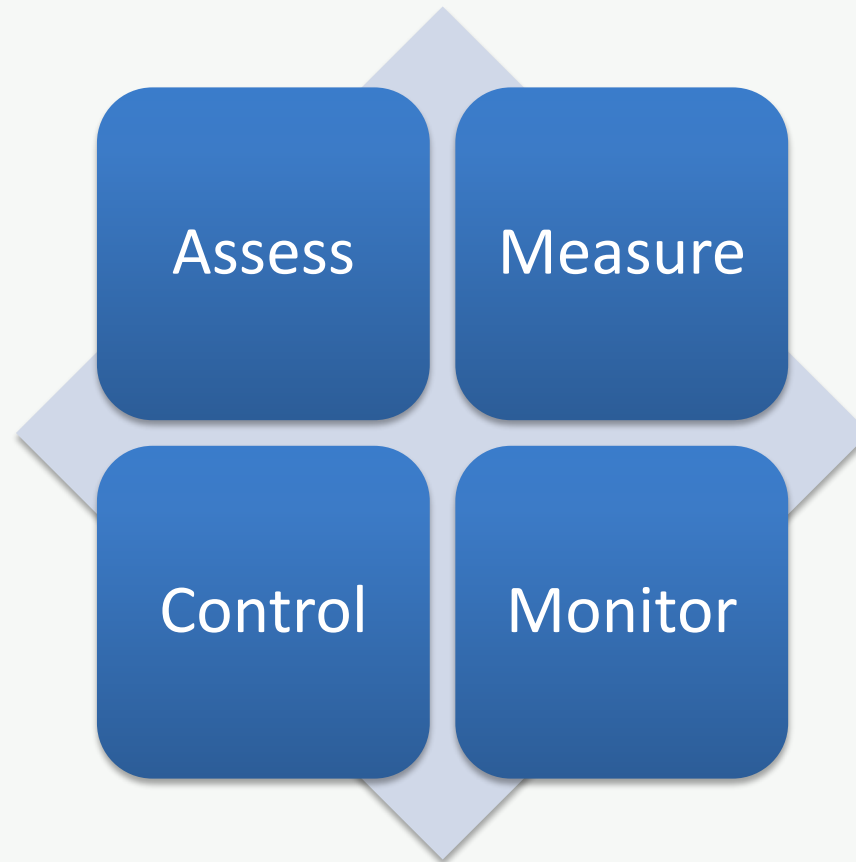
- 448 responders
- 45% work with at least 1,000 / year
- 58% uncovered legal, ethical or compliance issues after initial due diligence
- 65% were concerned with personal liability
- Renewal Data
  - 73% refresh on contract renewal; 53% at least every 3 years
- 85% somewhat / very concerned about data security risk
- 82% somewhat / very concerned about data privacy

# Risk Arising from Third Party

- Strategic
- Reputational
- Operational
- Transactional
- Credit
- Compliance
- Data
- Other



# Key to Managing



## Responsibility and Control

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Accountable Parties

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Risk Assessment

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Strong Selection Process

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Contract Structuring and Review

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Oversight and Accountability

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Process for Managing  
Associated Risk

What is  
your risk?



"So, how long have you been managing the  
Department of What Could Possibly Go Wrong?"



# Service Provider

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- University's state of the art athletic complex is open to the extended campus community. Administration outsourced management, class development, services and staffing.
- A complaint is brought against the facility and management claiming member of staff sexually harassed / assaulted a student. Complaint goes public creating PR nightmare.



# Telecommunications Contractor

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- Facility hires telecommunications contractor to upgrade their fiber-optic cable.
- Contractor accidentally crushed sewage line causing sewer backup at facility and neighboring businesses.
- This resulted in shutting down businesses for clean up and repair.





# Security System Installer

- Client had interior work done to their headquarters and needed the security panel moved.
- Security provider was installing the new key pad and decided to use a short ladder and some shelves to reach work area.
- Worker fell when stepping from the shelves to ladder. Sustained knee and back injury requiring surgery for both.



# Vendor Malware

- Bank's system is compromised when a vendor unintentionally sends a malware program via email to all employees.
- When a bank employee opens the email, the vendor's malware gains access to the system.
- Contact and credit card information is stolen for 75,000 customers.



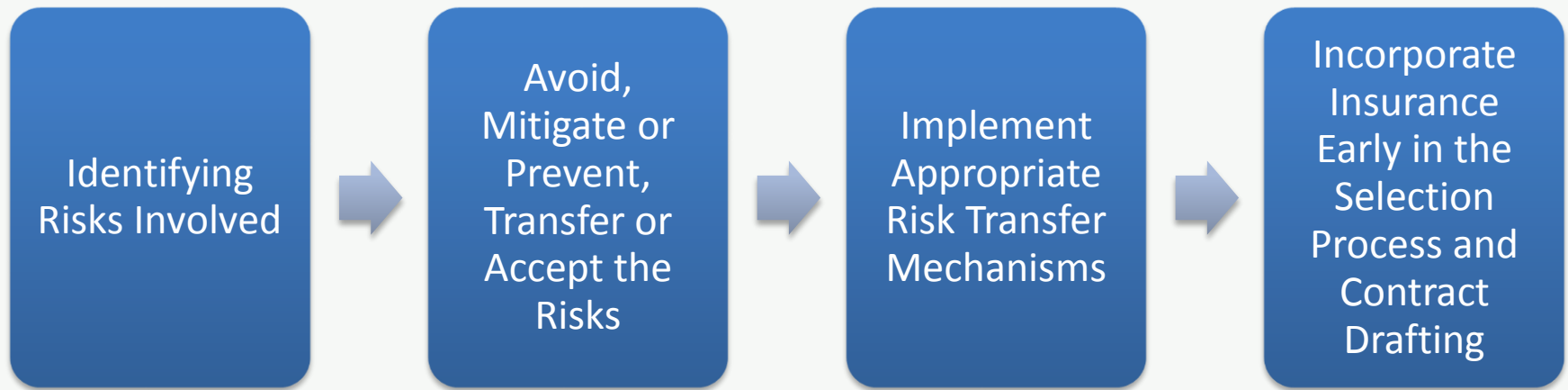
[This Photo](#) by Unknown Author is licensed under [CC BY](#)

# Assessing Third Party Risk:

- Who are all the parties involved?
- What kind of work is being done or services is being provided?
- What type of accidents or losses could occur?
- What is the worst-case scenario in terms of financial loss and / or injury to persons or property?
- Are the responsibilities for the risks appropriately placed with those in position to control them?
- What is the ability of the parties to manage the risk and absorb losses?
- Is the contract legal and enforceable?



# Incorporating Risk Management into Third Party Contracts



Consider working with your insurance Agent or Broker to help guide you through loss scenarios and risk management options.



## Third Party Contracts: Insurance Guidelines

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# Contract Language

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Indemnification  
and Hold Harmless

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Non-Waiver  
Language

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Insurance Coverage  
and Limits

# Insurance Coverage

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General Liability

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Business Automobile

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Workers Compensation & Employers Liability

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Umbrella Liability

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Professional Liability

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Cyber Liability

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Builders Risk

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Pollution

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Crime

# Tier Insurance Requirements

Construction /  
Renovation  
Project

Vendor  
Contracts

Consulting or  
Professional  
Services

Service  
Contracts

Partner  
Agreements

Trade  
Contracts

MWBEs



# Sample Consulting / Professional

## CONSULTING AND PROFESSIONAL SERVICES AGREEMENTS

INSURANCE REQUIREMENTS	MINIMUM LIMITS	NOTES
<b>Commercial General Liability</b>	\$1,000,000 per occurrence \$2,000,000 General Aggregate	Insurance must be maintained for the duration of the contract or longer if so stated in contract. <i>The general aggregate is twice the minimum required occurrence limit.</i>
<b>Business Automobile Coverage</b>	\$1,000,000 CSL/each accident limit for bodily injury and property damage	Coverage must include:  All owned, leased, hired, non-owned and employee non-owned vehicles.
<b>Workers' Compensation (Statutory) &amp; Employers Liability</b>	Coverage A, in compliance with the laws of the State of Texas; and Coverage B, \$1,000,000/\$1,000,000/\$1,000,000	This coverage must include statutory coverage for states in which employees are engaging in work.
<b>Professional Liability Insurance</b>	\$1,000,000 per claim \$2,000,000 Aggregate  <b>The scope of work, size of contract and potential for loss may require higher limits.</b>	Required whenever the service provider is required to be certified by the State of Texas and/or where the consultant's errors in judgment, planning, design, etc., could result in economic loss to  Baylor may require that the Consultant/Service Provider provide proof of coverage for up to three (3) years after the completion of the project.

# Sample Vendor

## VENDOR AGREEMENTS

INSURANCE REQUIREMENTS	MINIMUM LIMITS	NOTES
<b>Commercial General Liability</b>	\$1,000,000 per occurrence  \$2,000,000 General Aggregate	These insurance requirements are for vendors (those individuals or businesses who sell their product to others while on premises). Insurance must be maintained for the duration the vendor is on premises.  <i>The general aggregate and the products/completed operations aggregate are twice the minimum required occurrence limit.</i>
<b>Business Automobile Coverage</b>	\$1,000,000 CSL/each accident limit for bodily injury and property damage	Coverage must include: All owned, leased, hired, non-owned and employee non-owned vehicles.
<b>Workers' Compensation (Statutory) &amp; Employers Liability</b>	Coverage A, in compliance with the laws of the State of Texas; and Coverage B, \$1,000,000/\$1,000,000/ \$1,000,000	This coverage must include statutory coverage for states in which employees are engaging in work.
Depending on the nature of the product being sold, higher limits of liability may be required.		

# Sample Construction

## Construction/Renovation Projects

INSURANCE REQUIREMENTS	MINIMUM LIMITS	NOTES
<b>Commercial General Liability</b>	\$1,000,000 each Occurrence  \$2,000,000 General Aggregate	Designated Construction Projects General Aggregate Limit must be maintained for the duration of the agreement or longer, if required and so stated in contract. The size and scope of the contract and the potential exposure will dictate the minimum level of coverage required. <i>The designated construction project(s) general aggregate and the products/completed operations aggregate are twice the minimum required occurrence limit.</i>
<b>Business Automobile Coverage</b>	\$1,000,000 CSL/each accident limit for bodily injury and property damage	Coverage must include:  All owned, leased, hired, non-owned and employee non-owned vehicles.
<b>Workers' Compensation (Statutory) &amp; Employers Liability</b>	Coverage A, in compliance with the laws of the State of Texas; and Coverage B, \$1,000,000/\$1,000,000/\$1,000,000	This coverage must include statutory coverage for states in which employees are engaging in work. If there is an exposure of injury to Contractors employees under the U.S. Longshoreman's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.
<b>Umbrella Liability</b>	\$1,000,000	Higher limits may be requested for certain contracts.
<b>Professional Liability (Design Errors and Omissions Liability)</b>	\$1,000,000 per claim per policy year.	Required if the contractor is performing any type of design/build for a particular project. _____ may require proof that this coverage be provided for up to three (3) years after project completion.
<b>Builder's Risk Insurance (Property)</b>	Hard Construction values of project	Required on ALL construction projects involving any new buildings or additions to existing buildings. Some renovation projects may require Builders Risk. Contact Risk Management for assistance.
<b>Pollution Liability</b>	\$1,000,000 per Loss \$1,000,000 Aggregate	Should be obtained through the Contractors' Pollution Liability policy.
<b>NOTE:</b> Contractors are required to ensure that all subcontractors are insured under the contractors' policies. All subcontractors and sub-tier contractors are required to comply with the coverage and limit requirements outlined in this document.		

# Additional Contract Requirements

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Certificates of Insurance & Copies of Endorsements

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Written on an "occurrence" basis

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Advance written notice of cancellation (30 days)

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Additional Insured as specified by Contract

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Primary and Non-contributory

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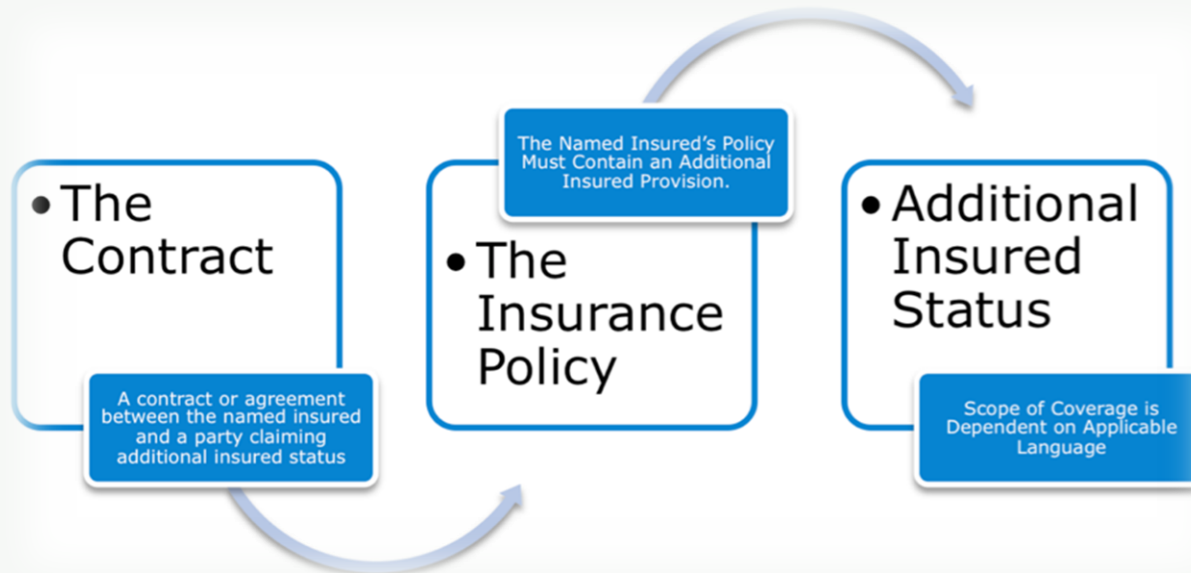
Waiver of Subrogation

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Licensed in State & AM Best Rating

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# Additional Insured Status



# Gilbane v. St. Paul Fire



- DASNY financed and managed construction project
- Gilbane/TDX (JV) was retained by DASNY to provide Construction Management services. JV was to be named as AI.
- DASNY separately contracted with Samson for foundation and excavation work. Samson agreed to add AI list to GL.
- There was no written contract between JV and Sampson
- Samson causes damage to adjacent building, DASNY sues Samson and architect which commenced 3rd party action against Gilbane.
- Gilbane sued Liberty to provide legal defense and indemnification.
- Liberty not obligated to provide coverage on the grounds of no written contract.



# Insurance Compliance & Oversight

## Define the Process

- Accountable Team
- Contract Template: Insurance Requirements
- Contract Execution, Onboarding, Renewals
- System or Platform

## Method of Document Collection & Storage

- Frequency, e.g. Renewal of Contract or Policies
- Method of Third Party Outreach
- Email, Fax, Upload URL
- Documentation of Certs / Endorsement Details

## Review for Compliance & Approval

- Review Certificates / Endorsements Against Contract Requirements
- Document System for Compliance or Non-Compliance
- Set System for Auto Renewal Reminders

## Ongoing Compliance: Monitoring and Review

- Renewal Correspondence Setup for Third Party Contract
- Collection of Renewal Certificates and Endorsements
- Review, Approve and Document

# Insurance Documentation

- Document Collection:
  - Certificates-Acord 27/28/25/855
- Endorsements
  - Waiver of Subrogation
  - Primary and Non-contributory
  - Additional Insured
  - Policy Decs / Forms / Exclusions pages





# Insurance Document Review

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Do certificates meet contract requirements?

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Is your firm listed correctly as an Additional Insured?

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Have you received required endorsements?

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Any forms or exclusions that are problematic?

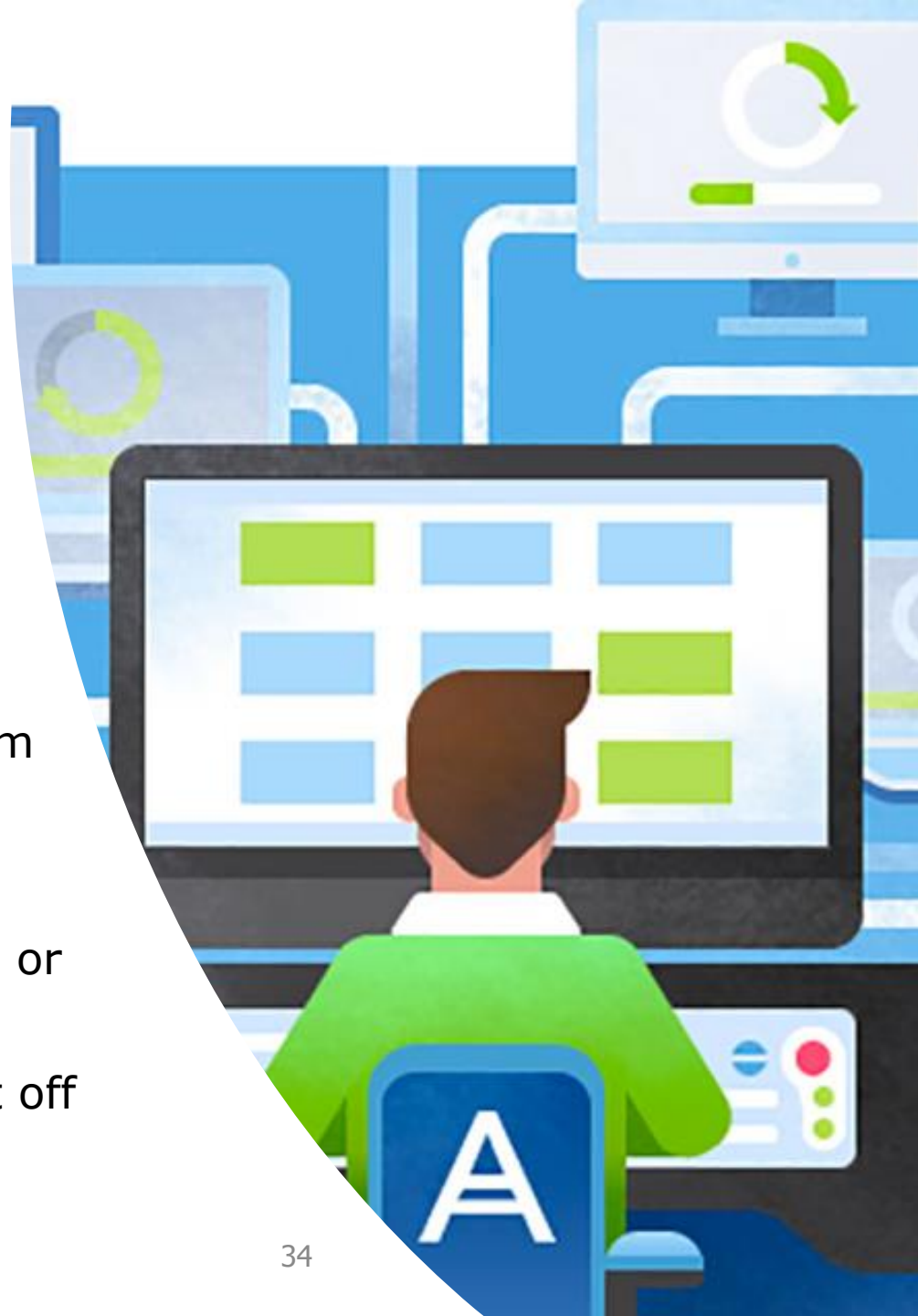
# Ongoing Compliance

## Monitoring & Review

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Insurance policies renew annually and often differ from expiring:

- New Broker may amend program
- New Carrier may have different forms and / or exclusions
- Coverage, limits, endorsements or language may change
- Additional Insured's may be left off



## Platforms and Technology



“What if we don’t change at all ...  
and something magical just happens?”

# Challenges to Managing Compliance

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Number of contracts and  
related documents

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Systems: Constraints &  
Restrains

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Knowledge and Expertise

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Time & Ease

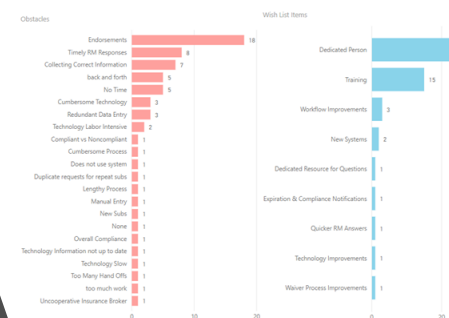
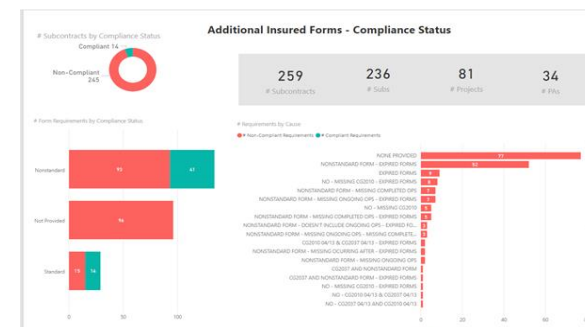
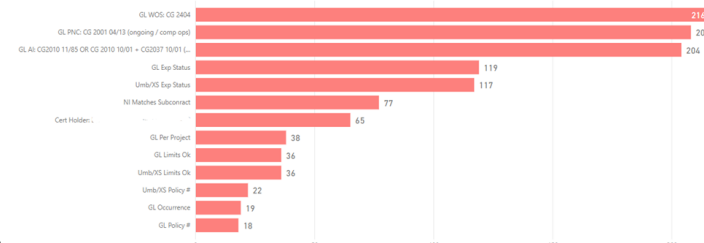
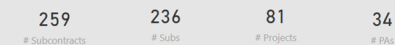
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Resources: Dollars and  
People

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# Audit

- Performed for 280 Subcontracts
- Measuring 10 points of compliance
- Client had best practices in place and had performed training for team
- Concerned about acceptability of AI and Endorsement language
- Formulated a roadmap based on the audit findings



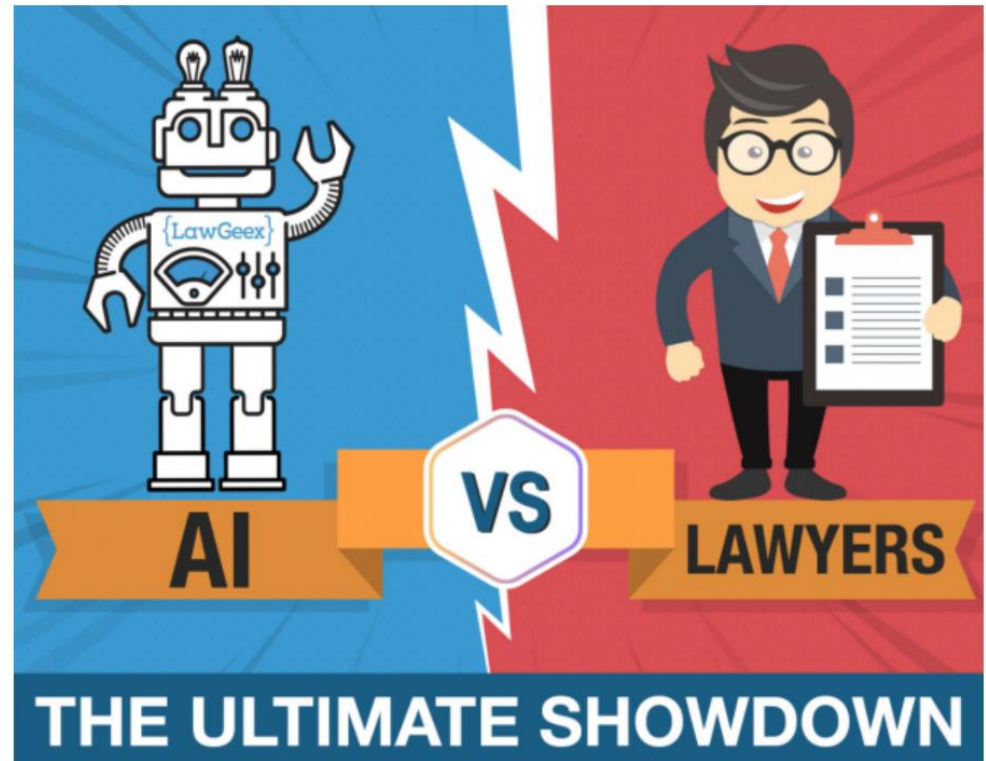
# Compliance Platform

- Excel is not a platform
- Accounting and/or Bid platforms are not built to manage insurance compliance
- Manual entry makes for errors
- Manual outreach and follow up will back up the system
- Needs to have reporting capability
- Consider your human capital costs



# Artificial Intelligence

- 20 Attorneys vs AI
- Non-Disclosure Agreements
- Two months of testing
- Accuracy:
  - AI average 94%
  - Lawyers 85%
- Timing:
  - Lawyers 51-156 Minutes
  - AI: 26 seconds



# Platform Consideration

- Multi-system integration
- Service, support and training
- Project and contract tiering
- Automated outreach and follow-up
- Simplified URL / Dashboard for Third Parties to upload documents
- Optical Character Recognition (OCR) technology
- Dashboard reporting
- Customization
- Simplicity / Intuitive
- Cost Effective







## Company Search

Select All Results (0) Clear All Selected Total: 7 records. |

[Export All Results](#)[Bulk Update Requirement Group](#)[Send Communication](#)

<input type="checkbox"/>	Company Name (Location) ⇅	Hierarchy Level ⇅	Compliance Status ⇅	Reason ⇅	Risk Level ⇅	Ad
<input type="checkbox"/>	ABC Plumbing (Dallas, TX)	Orlando Property, Plumbing	Non Compliance	Missing Active Documents,Missing Coverage	<div><div></div><div></div><div></div><div></div><div></div></div>	77
<input type="checkbox"/>	ABC Plumbing (Project ABC)	Los Angeles Property, Sacramento Property, Plumbing	Non Compliance	Missing Active Documents	<div><div></div><div></div><div></div><div></div><div></div></div>	12
<input type="checkbox"/>	Athens Services, Inc. (City of Industry, CA)	Orlando Property	Non Compliance	Missing Active Documents,Missing Coverage	<div><div></div><div></div><div></div><div></div><div></div></div>	14
<input type="checkbox"/>	ATT (Los Angeles, CA)	Los Angeles Property, Retail	In Compliance	Set As In Compliance	<div><div></div><div></div><div></div><div></div><div></div></div>	12
<input type="checkbox"/>	Barry's Bar & Grill (Los Angeles, CA)	Los Angeles Property, Bar/Grill	Non Compliance	Missing Active Documents	<div><div></div><div></div><div></div><div></div><div></div></div>	12
<input type="checkbox"/>	FlyMan Janitorial Service (Sacramento, CA)	Los Angeles Property, Sacramento Property, Janitor	Non Compliance	Missing Active Documents	<div><div></div><div></div><div></div><div></div><div></div></div>	15
<input type="checkbox"/>	Surge Electric (San Francisco, CA)	Los Angeles Property, Sacramento Property, Electrical	Non Compliance	Missing Active Documents	<div><div></div><div></div><div></div><div></div><div></div></div>	12



Company: ABC Plumbing (Dallas, TX)

[Forward Request to broker/producer](#)

### Welcome to SmartCompliance

Please review and upload the requested documents. You will be able to visually confirm if you have met the compliance requirements.

You may also forward this to your broker/producer where the requested documents may be uploaded.

### Requirements (Reference: ✔ In Compliance ✘ Non Compliance)

#### ✘ Certificate of Insurance

Details	Uploaded Certificate of Insurance				
Message	View	Doc Date	Uploaded on	Uploaded by	Status
<span style="color: green;">✔</span> General Liability >= \$500,000 COL.[(general liability).(Each Occurrence)] >= 500000	<a href="#">View</a>	11-10-2010	01-23-2018	garrett.sayre@jbknowledge.com	Processed
<span style="color: red;">✘</span> Umbrella >= \$500,000 Excess/Umbrella Each Occurrence no less than \$500,000	<a href="#">View</a>	09-04-2017	04-13-2018	garrett.sayre@jbknowledge.com	Processed
<span style="color: green;">✔</span> Auto >= \$1,000,000 Auto Liability Combined Single Limits no less than \$1,000,000	<a href="#">View</a>	09-30-2016	04-24-2018	garrett.sayre@jbknowledge.com	Processed
<span style="color: green;">✔</span> Workers Comp >= \$1,000,000 Workers Comp Each Accident no less than \$1,000,000	<div>Upload new File</div>				
<span style="color: red;">✘</span> Cyber Security Check Cyber Security Required					

#### ✘ Additional Insured End

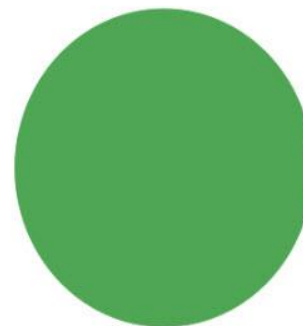
Details	Uploaded Additional Insured End
Message	
<span style="color: red;">✘</span> It Is Required It Is Required	No Additional Insured Ends were found
	<div>Upload new File</div>

## Companies Graphics Report

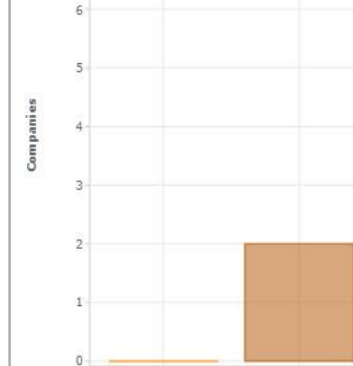
### Compliance by Status



### In Compliance by Reason



### Non Compliance by Reason



## Compliance Report

PDF Excel

In Compliance		Total: 1
Successful Evaluation Of Documents	Companies: 0	
Set As In Compliance	Companies: 1	
Non Compliance		Total: 6
Insufficient Limits	Companies: 0	
Missing Coverage	Companies: 2	
Missing Active Documents	Companies: 6	
Incorrect State License	Companies: 0	
Incorrect Type License	Companies: 0	
Undefined		Total: 0
Without Requirement Group	Companies: 0	

## Hierarchy Level Compliance Rate

Hierarchy Level	In Compliance	Non Compliance
Corporate \ Campuses \ Los Angeles Property	1	4
Corporate \ Campuses \ Orlando Property	0	2
Corporate \ Campuses \ Sacramento Property	0	3
Corporate \ Contractor \ Electrical	0	1
Corporate \ Contractor \ Plumbing	0	2
Corporate \ Tenant \ Bar/Grill	0	1
Corporate \ Tenant \ Retail	1	0
Corporate \ Vendor \ Janitor	0	1

# Keys to Successful Adoption

- System integration and data migration must be manageable
- Must simplify and automate steps in the compliance process
- Minimize data entry, allowing for more critical thinking
- What gets measured gets fixed, robust reporting!
- Cost benefit analysis – do the numbers make sense?



# Wrap up

- Number of Third Party Contracts will continue to grow and so too will your resulting risk
- Developing a replicable process for analyzing and managing Third Party risk and...
- Incorporating insurance into the early stages of contract development will help mitigate losses.
- Commit to a thorough practice of insurance compliance and review – for both new and renewing contracts.

