

2015 HOSPITALITY LAW CONFERENCE

FEBRUARY 9-11, 2015,

GUEST AND EMPLOYEE INSURANCE CLAIMS AND SOLUTIONS – DISCUSSION OF MOST FREQUENT CLAIMS AND HOW TO PREVENT THEM

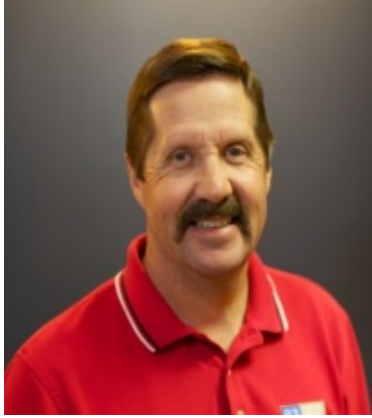
Presented by:

Todd Seiders of Petra Risk Solutions
&

Allen R. Wolff, Esq. of Anderson Kill



PRESENTERS



Todd Seiders

Director of Loss Control for Petra Risk Solutions

- ❖ oversees the risk management and claims departments for approximately 3400 hotels, resorts and spas nationwide
- ❖ extensive hands on experience with administering Hotel Security, OSHA Safety, and Loss Prevention programs in the workplace.
- ❖ a Certified Lodging Security Director (CLSD), awarded by the American Hotel Lodging Association



Allen R, Wolff, Esq.

Shareholder, Anderson Kill, P.C.

- ❖ practice concentrates in construction litigation, insurance recovery, and the nexus between the two, as well as in complex commercial litigation.
- ❖ a member of Anderson Kill's Hospitality Industry group and Banking and Lending group.



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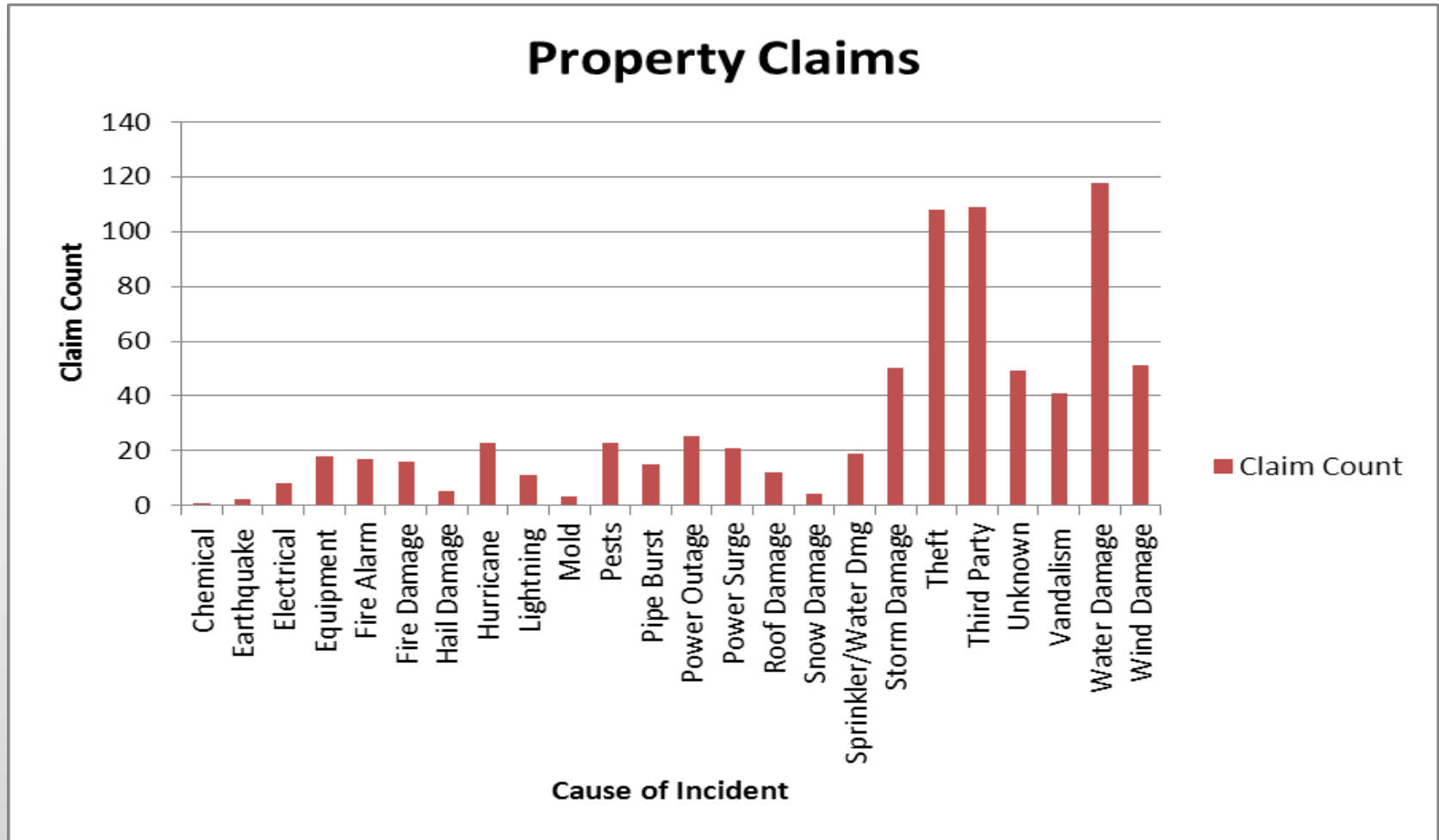


AGENDA

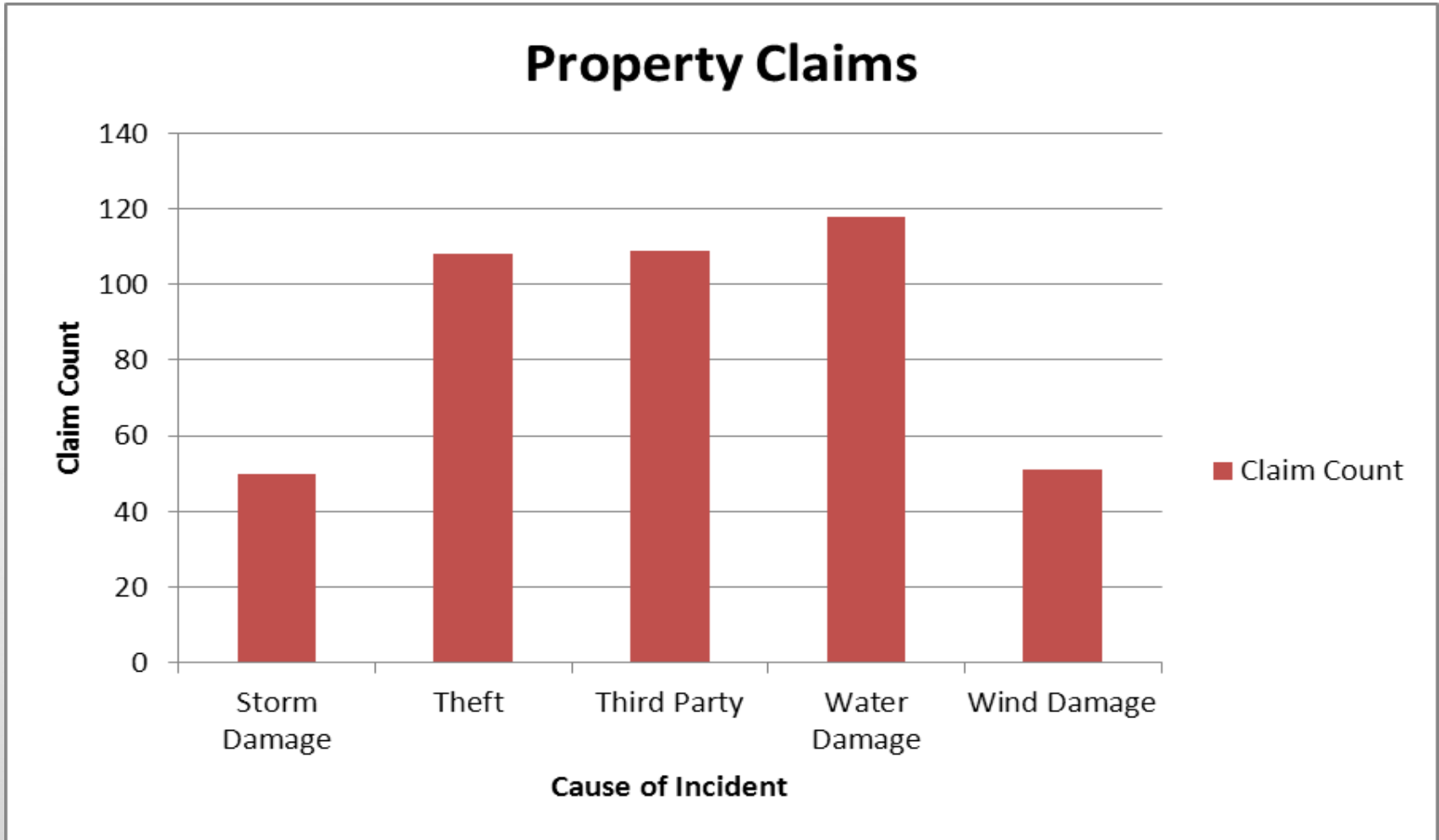
- Property Claims
- Property Insurance Coverage
- Business Interruption Coverage
- Guest Liability Claims
- General Liability Insurance Coverage
- Cyber Liability Claims
- Worker's Compensation Claims
- Worker's Compensation Insurance Coverage
- Tips on Insurance Claims

PROPERTY CLAIMS, ISSUES AND INSURANCE

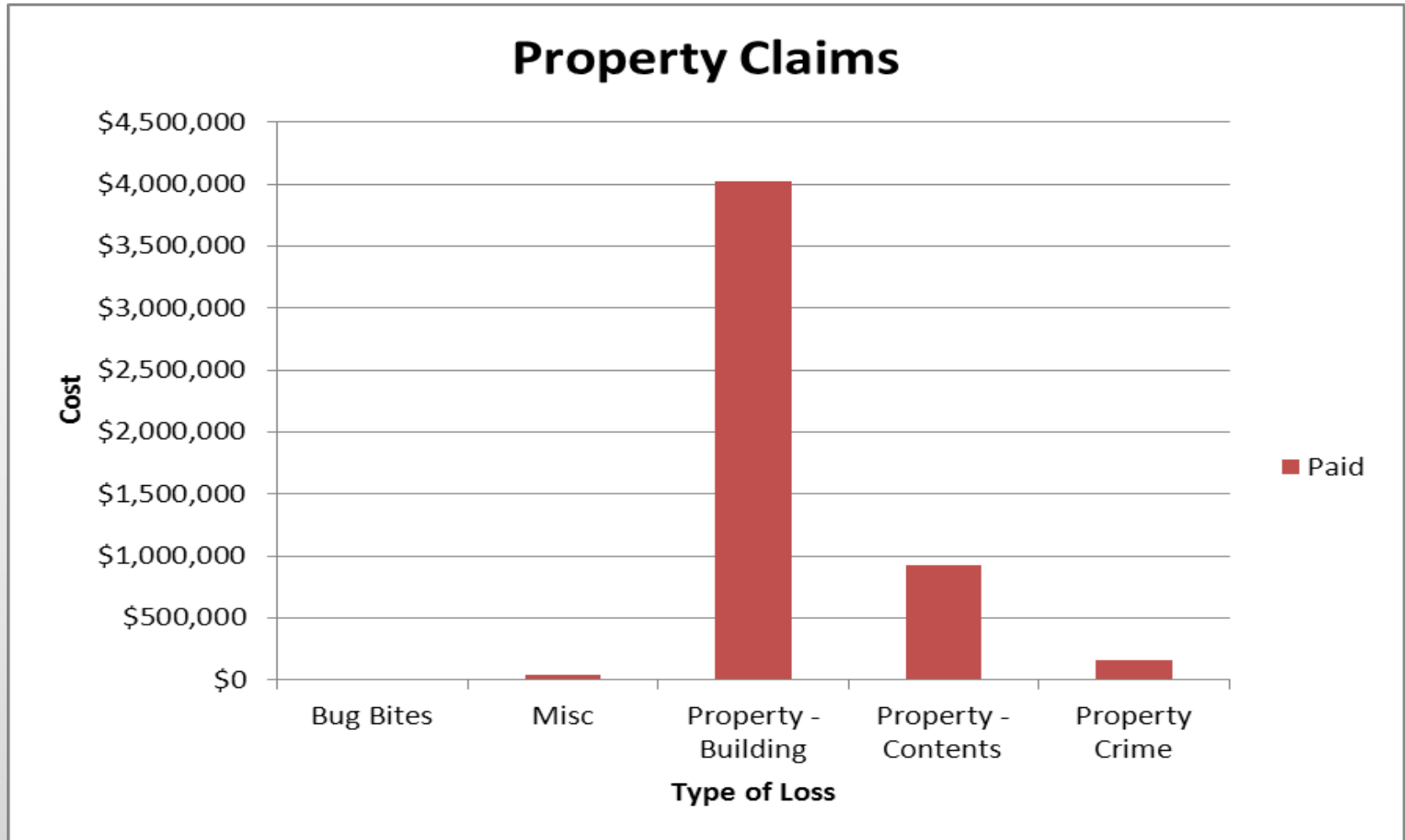
PROPERTY CLAIMS



TOP (5) CLAIMS BY NUMBER FILED



CLAIMS BY COST OF CLAIM



PROPERTY INSURANCE COVERAGE

FIRST-PARTY COVERAGE

- Insurance for damage to policyholder's own property
- Not for damaged caused to property of others
- Business Interruption (also first-party loss)
- Types of First-Party Contracts
 - Named Perils Policies
 - All-Risks Policies
 - Boiler & Machinery Policies
 - Builder's Risk Policies

TYPES OF PROPERTY AND RISKS THAT ARE COVERED

- Named Perils
- All Risk

BUSINESS INTERRUPTION (BUSINESS INCOME) LOSSES

Basic Coverage

The purpose of a basic business interruption coverage provision is to provide the policyholder with the income it would have earned had its business not been interrupted because of damage to property covered under the policy.

WHERE DO YOU FIND YOUR BUSINESS INTERRUPTION COVERAGE

- Generally, this coverage can be found as part of Your First-Party Commercial Property Policy under the Business Income and Extra Expense Coverage Form
- Review declarations page for existence of coverage (i.e. is the property a covered location), limits, sublimits, and deductibles
- Always consider the impact of exclusions or endorsements on business interruption coverage

BUSINESS INTERRUPTION LOSSES

“STANDARD” BI

Common Elements:

- Physical Damage (at an Insured Location)
- Causation
 - Results from covered peril and causes business income loss
- Necessary interruption or suspension of operations (Partial vs. Total Suspension)
- Period of Restoration
 - Extended BI

SOME BUSINESS INTERRUPTION POLICY FORMS COVER SLOWDOWNS

- In recent years, the insurance market has responded to the need for coverage of a partial cessation or slowdown in business operations
 - A definition of the term “Suspension” has been added to the 1999 edition of the ISO form
 - Some Broker Manuscript Business Interruption forms now expressly address this issue



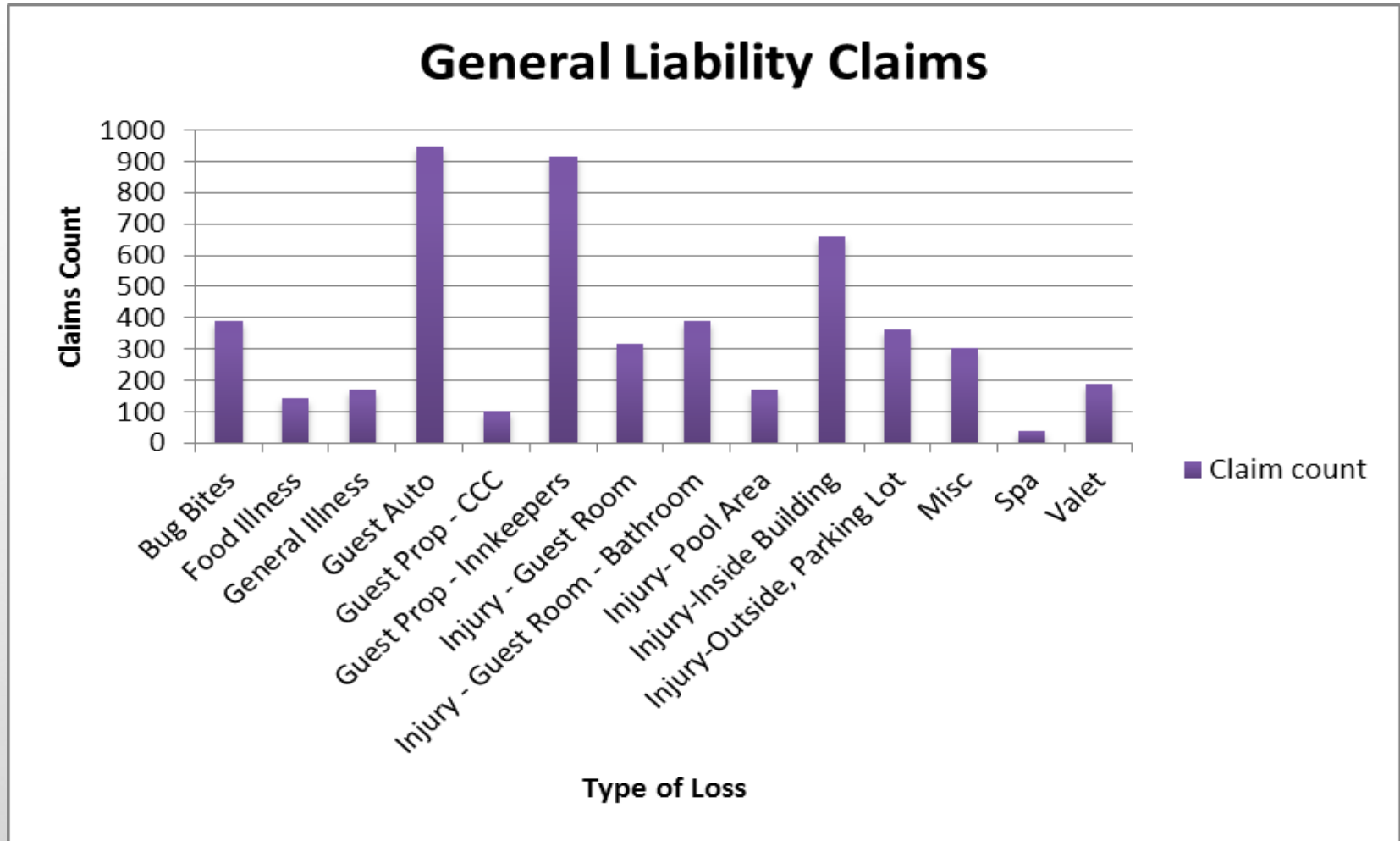
TIPS

Policyholders experiencing a business interruption should:

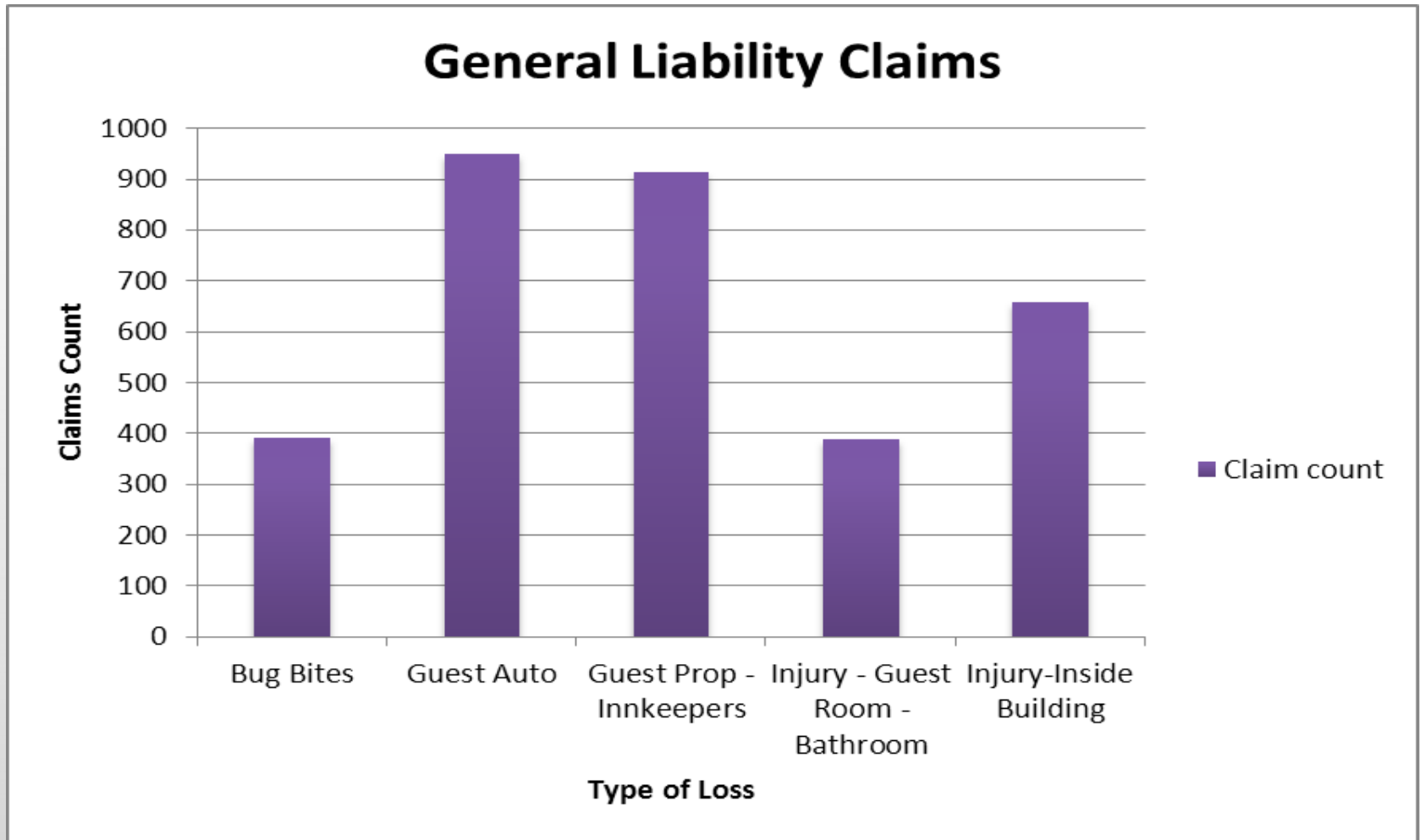
- Review the terms of their policies
 - See whether their policy covers complete or partial interruptions
 - Ensure that they have other beneficial coverage, such as reimbursement for expenses associated with professional services needed to prepare a business interruption claim
- Document, document, document!



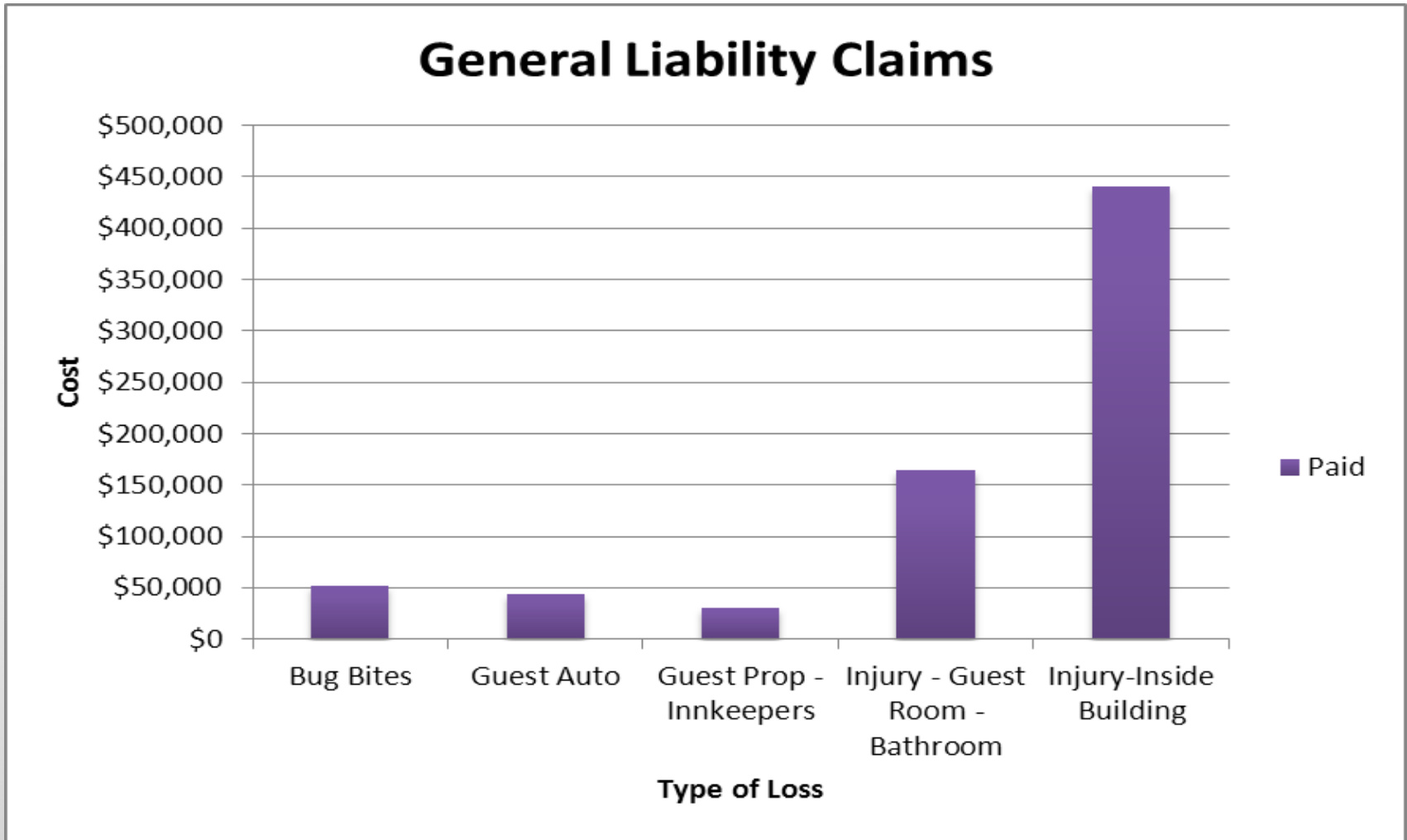
GUEST LIABILITY CLAIMS



TOP (5) GUEST CLAIMS



GUEST CLAIMS BY COST



LEGAL “DUTY” OF GUEST CARE

- Duty of care is to provide a reasonably safe premise for reasonably foreseeable hazards.
- Reasonable Foreseeability is a legal standard often used to determine liability.
- Was it reasonably foreseeable that this accident could have occurred?
- Inspect regularly, ask for employee feedback and guest feedback on conditions at your hotel

“REASONABLE FORESEEABILITY”



GENERAL LIABILITY INSURANCE

- What does it do?
 - Protects owners and operators of businesses from a wide variety of liability exposures.
 - Other policyholders may include municipalities, states, or any entities with a wide range of potential liabilities.
 - Covers negligent acts or omissions
 - Pays on behalf of a policyholder for loss arising out of its responsibility to others
 - Always involves a third party

WHAT'S TYPICALLY COVERED?

- Bodily Injury and Property Damage
- Personal and Advertising Injury
- Medical Payments

LIMIT OF LIABILITY

- The amount for which an insurance company is liable under the policy.
- Typically paid “per occurrence” or “per claim” and subject to an “Aggregate Limit of Liability.”

OCCURRENCE

- An accident, including continuous or repeated exposure to substantially the same general harmful conditions; an act or related series of acts causing injury to persons or damage to property
- Need fortuity

COMMON CGL POLICY CONDITIONS

- Notice
- Cooperation Clause:
 - Must cooperate with insurance company in the investigation, settlement or defense of a claim or suit
 - No duty after denial
 - Duty remains if defending under a reservation of rights
- Expected or Intended Injury exclusions
- Business Risk exclusions

ADVERTISING INJURY

- Advertising injury means injury, other than bodily injury or personal injury, arising solely out of one or more of the following offenses committed in the course of advertising your goods, products or services:
 1. oral or written publication of advertising material that slanders or libels a person or organization;
 2. oral or written publication of advertising material that violates a person's right of privacy; or
 3. infringement of copyrighted titles, slogans or other advertising materials.
- Advertising means any paid: advertisement, publicity article, broadcast or telecast.

PERSONAL INJURY

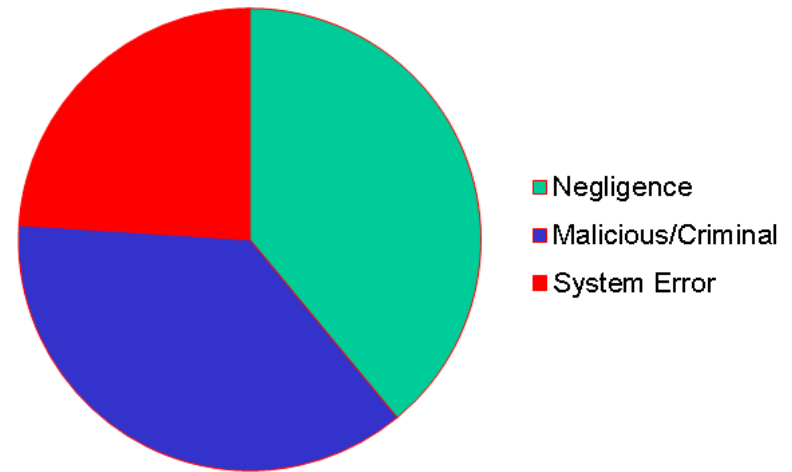
Personal injury means injury, other than bodily injury, arising out of one or more of the following offenses committed in the course of your business, other than your advertising:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or persons occupy, by or on behalf of its owner, landlord or lessor;
4. oral or written publication of material that slanders or libels a person or organization;
5. oral or written publication of material that violates a person's right of privacy; or
6. discrimination (unless insurance thereof is prohibited by law).

DATA SECURITY BREACHES

WHAT ARE THE CAUSES?

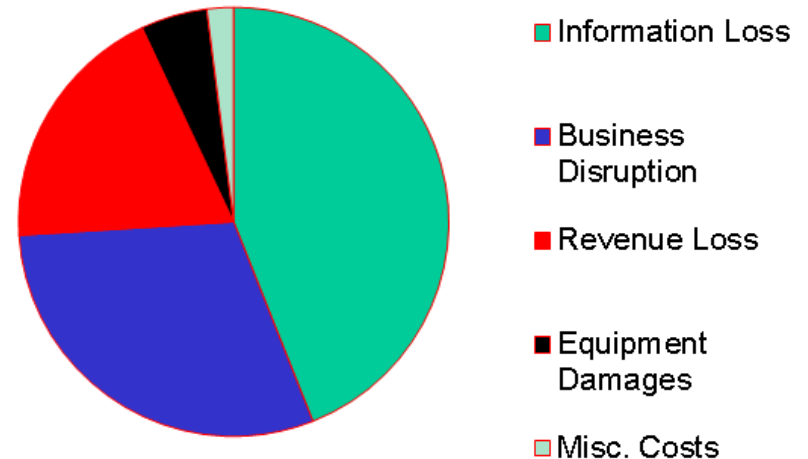
- Negligence – 35%
- Malicious or Criminal Attack – 37%
- System Error – 29%¹



¹2013 Cost of Data Breach Study: Global Analysis, Ponemon Institute, May 2013.
<http://www.ponemon.org/local/upload/file/2013%20Report%20GLOBAL%20CODB%20FINAL%205-2.pdf>

WHAT ARE THE EFFECTS?

- Information Loss – 44%
- Business Disruption – 30%
- Revenue Loss – 19%
- Equipment Damages – 5%
- Other Miscellaneous Costs – 2%²



²2013 Cost of Data Breach Study: Global Analysis, Ponemon Institute, May 2013.

<http://www.ponemon.org/local/upload/file/2013%20Report%20GLOBAL%20CODB%20FINAL%205-2.pdf>

WHAT'S THE COST?

AVERAGE RESOLUTION TIME:
24 days



AVERAGE COST:
\$5.4 Million³



³2013 Cost of Data Breach Study: Global Analysis, Ponemon Institute, June 2013.

<http://www.symantec.com/about/news/release/article.jsp?>

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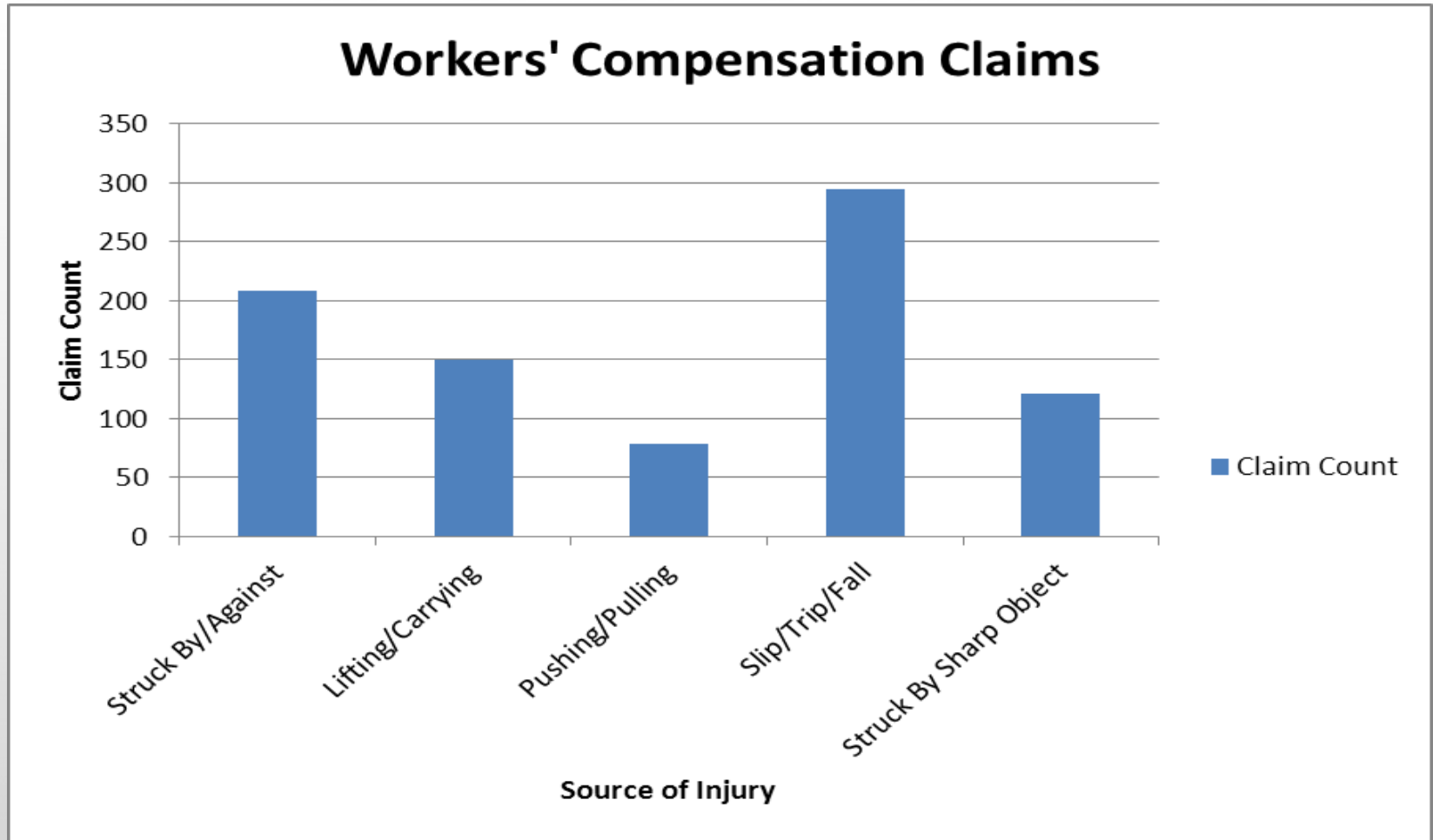
DEALING WITH A SECURITY BREACH

- Data Breach Team and Plan needs to be in place
- Compliance with State Notice
- Make sure your insurance provides cover where cloud used
- Notice all potentially applicable insurance

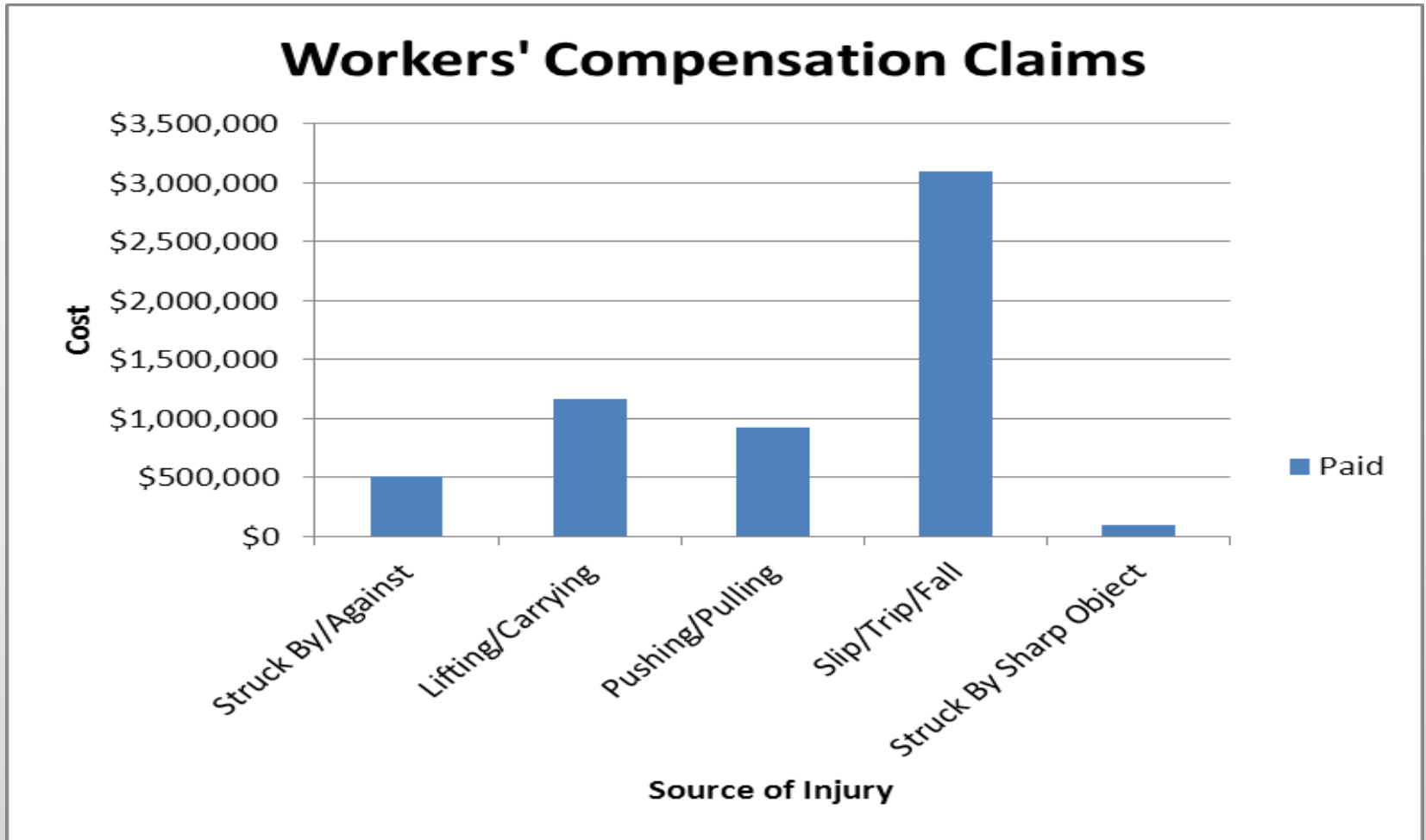
EMPLOYEE WORK COMP CLAIMS

- These are the insurance claims across the board that are killing you....
 - Medical costs and litigation costs are skyrocketing nationally.
 - Prevention is still the key to saving money.
 - There are new products and information we have found that may help.

TOP (5) WORK COMP CLAIMS



TOP WORK COMP CLAIMS BY COST



THE TOP WORK COMP CLAIMS ARE:

- Employee Slip / Trip / and Falls
- Employee Striking or Bumping into an object
- Employee Lifting and Carrying

SOLUTIONS FOR SLIP/TRIP/FALL

- Make your employees purchase specific workplace non slip shoes (Prices range from \$20 to \$150, affordable with great styles)
- Provide an incentive, \$20 credit per pair a year etc.
- Shoe manufacturers will come to workplace to sell and fit
- These shoes work!



A HOUSEKEEPER INJURY PREVENTION REVELATION.....

- Housekeepers make up a majority of your Work Comp injuries.
- Petra Risk Solutions conducted an extensive statistical evaluation of hundreds of hotels across the U.S., and found a “magic number” that will help prevent injury...
- That magic number is.....”15”
- What do you think this number refers too?

THE MAGIC NUMBER “15”

Rooms Cleaned a day!

- If your Housekeepers clean 15 or less rooms a day (stay over or checkout), we discovered a major reduction of reported injuries.
- 16 or more rooms a day showed a significant **INCREASE** in Housekeeper injuries....

Workers Compensation Insurance

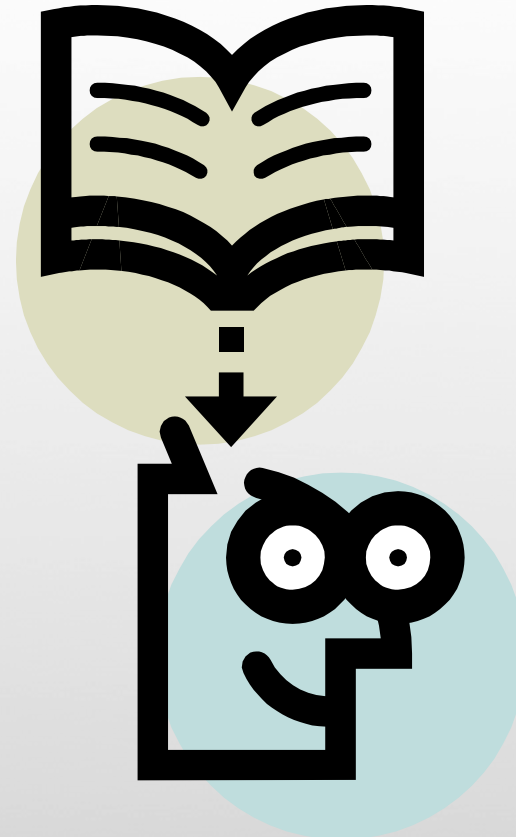
- Collateral Agreements
 - Side Agreements governing WC Collateral – LOC's and Cash
 - Increases in Collateral and Demand
 - “Default” Clauses
 - Arbitration Clauses

Workers Compensation Insurance

- Resolving Disputes
 - Come armed with independent reviews
 - Challenge arbitration agreements
 - Use the renewal process

TIP #1: THINK INSURANCE AFTER A LOSS OCCURS

- Look to insurance coverage following all lawsuits, claim letters, product-related issues, and financial losses



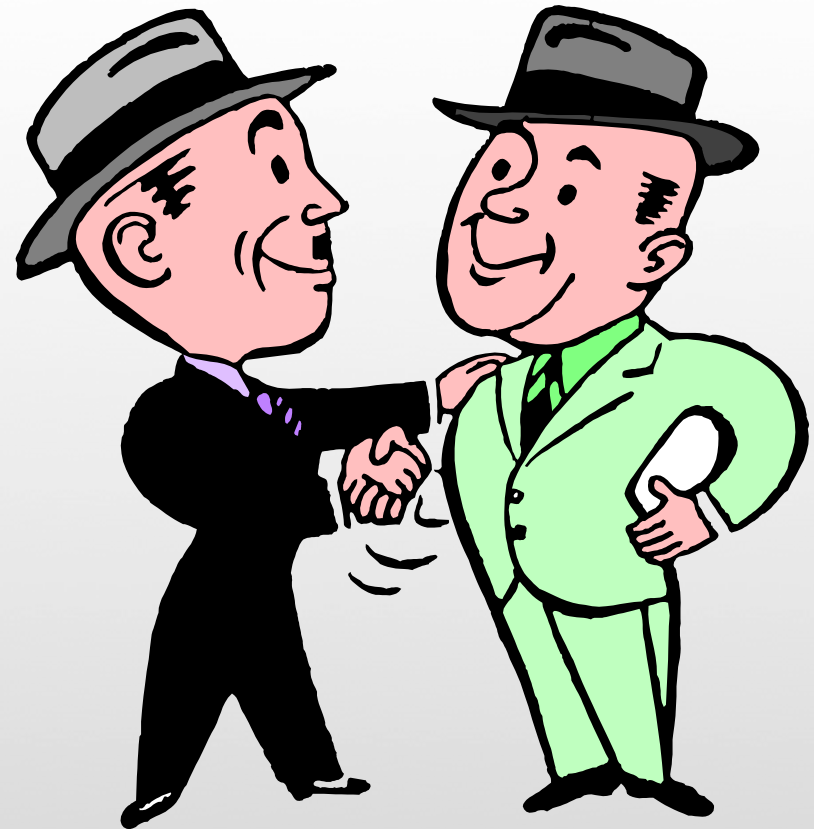
TIP #2: GIVE NOTICE OF A CLAIM OR LOSS AS SOON AS POSSIBLE

- Claims made and reported v. occurrence
- Late Notice Rule: prejudice
- When you are faced with a claim or loss, notify the broker, the insurance company, or both



TIP #3: FULFILL YOUR DUTY TO COOPERATE, WISELY

- The Policy may contain a “Duty to Cooperate” clause
 - investigation
 - defense
 - settlement
 - must you cooperate?



TIP #4: WHEN YOU MAKE A CLAIM, DO NOT ACCEPT “NO” FOR AN ANSWER



- Challenge insurance company's denial of coverage
- Determination and persistence often mean the difference between coverage and no coverage

TIP #5: BUY THE RIGHT INSURANCE PRODUCT

Buying Insurance Policies

- Named Insured – make sure you have coverage for the entities you intend at claim time
- Exclusions (asbestos; professional services; intentional acts/fraud; contractual liability; pollution; punitive damages)
- Endorsements
- Dispute resolution provision; Choice of law
- Defense costs outside of policy limits?
- Misrepresentation in application -- rescission

TIP #6: DEAL WITH THE RIGHT PEOPLE

Tips:

- All communications about insurance in writing
- Responsible individual review
- Read the policy
- Use excellent brokers and consultants effectively

TIP #7: DO NOT SLEEP THROUGH RENEWAL

- Renewals can be a surprise
- Beware of new or different endorsements
- Most jurisdictions require insurer to notify policyholder of any material reduction in coverage on renewal
- Notice to Additional Insureds

TIP #8: CARRY A BIG STICK

- The Best Defense is a Good Offense
- Consider the relationships
- Cost and time of litigation
- What are the extra-contractual sources of recovery?
 - Consequential damages
 - Breach of duty of good faith
 - Torts
 - Attorneys' Fees

Disclaimer

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

Thank You!

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