ETHICS AND THE RISK MANAGER

by Faith Cring, JD, CPCU

Risk management professionals are frequently faced with a variety of ethical dilemmas. Sometimes the solutions are simple, but many times, they are faced with complex situations that defy easy resolution. In the following article, we look at a day in the life of a typical risk manager who has been presented with a number of difficult choices. The names of the people and companies depicted are fictitious, but the scenarios are not uncommon. As with any ethical dilemma, there are no right answers and no cut-and-dry ways forward. Instead the intention of this article is to stimulate discussion so that the next time you are faced with a similar situation, you will have a better understanding of what is at stake.

A Day in the Life

For three years, Susan has been the risk manager of Brotan Companies, a diversified, privately-held manufacturing company with operations in the United States and Canada. One morning she met with the vice president and the plant manager from one of their facilities to discuss a loss control report that they had received from the company’s property insurance carrier a week earlier.

In the report, the insurance carrier noted that Brotan did not have any fall protection in the rail loading area for workers who typically climbed the rail cars to complete their tasks. Although the insurance carrier did not handle workers compensation for Brotan, they wanted to bring it to the company’s attention as the lack of fall protection was a violation of OSHA regulations.

The vice president and plant manager explained to Susan that this issue came up five years ago and it was determined that it would cost $100,000 to install the fall protection. The company did not want to incur such a large capital expenditure. Additionally, there are union issues at the plant, it was not meeting its revenue targets and Brotan was already evaluating the plant to determine whether or not it would be shut down. When Susan asked about the time frame for this decision, the vice president responded by saying, “We will probably keep evaluating it for a couple of more years and then make the decision. But you can understand why we wouldn’t want to incur a $100,000 capital expenditure for a plant that currently isn’t hitting its targets. After all, OSHA hasn’t said anything and the insurance carrier doesn’t write the workers compensation, so there should be no concern.”

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After the meeting was over, the vice president asked Susan to review a contract for a new deal that Brotan was close to finalizing with Gleeco, a large baby products manufacturer. The contract called for Brotan’s injection molded plastics division to start making Gleeco car seats. Brotan would not only do the molding, but would also handle final assembly and packaging. Gleeco would supply the necessary
component parts and arrange the shipping from Brotan’s plant to the Gleeco warehouses for delivery. “It’s a large contract and if everything goes right, we should be able to start processing the car seats in the next 6 months,” said the vice president. “Take a look at the contract and see if you see anything that we need to address from a risk management perspective.”

Susan indicated that because it was a new product line, she wanted to consult with the company’s insurance broker to determine if it would lead to a premium increase. But the VP said, “We are technically not the manufacturer – Gleeco is. It’s their product, not ours. We do injection molded plastics and that hasn’t changed. I don’t see any need for you to talk to the insurance broker or the insurance company. If they ask, that’s fine. If they don’t, why cause an issue? This is also very hush, hush right now. We haven’t been awarded the contract yet.”

Susan said she’d take a look at the documents and get back to him with her comments.

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After her meeting with the vice president, Susan went back to her office to get ready for her afternoon meeting with Charlie, her insurance broker. The broker had e-mailed her a renewal quote for their automobile insurance and needed her to decide on what options she wanted to select for the renewal. The quote reflected a 20% increase in premiums that was driven both by a couple of large claims Brotan had had in the past couple of years and by the fact that the insurance carrier was increasing automobile insurance premiums across the board. Accounts that had larger premium volume and long relationships with them were getting less or no automatic increases, but other accounts were not getting the same considerations. This insurance carrier had only been on their automobile insurance for two years and it was the only line of insurance they were writing. Brotan had worked with this brokerage firm for 10 years and the broker was aware that the account was premium driven.

The broker offered Susan some different options in her renewal quote to minimize the increase in premium, including:

- Increase the liability deductible to $100,000 per claim (it was currently $10,000) per claim. No aggregate deductible was quoted.
- Eliminate physical damage coverage on all the vehicles and increase the liability deductible to $15,000 per claim.
- Move the insurance to another carrier. (The competing insurance carrier had not requested a listing of drivers in quoting the insurance.)
- Remove the personal vehicles that the owner of the company was insuring on the policy. Although these vehicles were personal (two of which were driven by the owner’s teenaged sons), they were titled under the company name so that cheaper commercial insurance could be purchased. One of the large claims involved an accident involving one of the son’s vehicles. The underwriter stated that if the vehicles were removed and the sons were excluded as drivers, they would consider repricing the renewal.
As Susan sat down to review the quotes again, the CFO came into her office. She had given him a copy of the renewal proposal when it arrived. The CFO started talking about the weekend outing he and his wife had with his brother-in-law, Bill, who worked in the accounting office of a competing insurance brokerage. The CFO wanted Susan to give copies of their insurance policies and loss runs to Bill. Since the automobile insurance premium had increased, Bill thought his brokerage might be able to get Brotan a better deal, but he wanted to look at all the insurance – not just the automobile policy.

Susan asked the CFO if she needed to prepare an RFP for new brokerage services. The CFO told her, “No, we don’t need to formalize this and I know you are meeting with Charlie, but don’t mention it to him. Bill just wants to see what he can do to help.” Susan reminded the CFO of the 10-year relationship with Charlie and that she didn’t feel comfortable not telling him. The CFO said, “Susan, you and I and others are judged on our performance. One of your goals each year is to reduce insurance premiums. The automobile insurance just increased 20%. If you don’t figure out how to decrease premiums, how do you expect your performance review to read this year?”

As the CFO left her office, she stared at the paperwork on her desk to decide on how to handle her meeting with Charlie.

How would you handle the various issues Susan was faced with today?

*Faith Cring, JD, CPCU is the Director, Safety and Insurance at GROWMARK, Inc and a member of RIMS Quality Advisory Council.*

**See Questions below, and talking points for discussion.**

**View related RIMS Resources at [www.RIMS.org/Quality](http://www.RIMS.org/Quality):**

- RIMS Principles of Ethics for Risk Management Professionals
- RIMS Risk Management Professional Growth Model
- RIMS Quality Partnership Builder Guidelines
Questions for Discussion

1. What were the ethical issues that Susan was confronted with this morning?

2. What should Susan be looking at when reviewing the Gleeco contract? Should she just turn to the insurance section?

3. When reviewing the various insurance options on the automobile insurance, what things should Susan consider?

4. What do you think of a broker quoting insurance based on only copies of insurance policies and loss runs?

5. Why would the new broker want to look at all the insurance and not just the automobile?

6. Should Susan tell the current broker?

7. How would you describe her current insurance program overall? Has it been crafted for long-range planning or short-term goals?

8. How might Brotan’s current operations benefit from a change in the way the insurance program is structured?

9. Part of Susan’s performance goals are related to premium savings. This creates a conflict of interest. How do you think this might affect her performance goals? Will Susan be making the best decisions for her company or making the best decisions for her performance review? Should her goals be tied to the company’s goals?

10. Look at the RIMS Risk Management Professional Growth Model. Where do you think Brotan executives currently view the risk manager’s position?

11. Can Susan influence the risk management culture of the company with her current skills and background? What skills should she have to move up in the RIMS Risk Management Professional Growth Model?

12. What type of approach should Susan use with the executives to show she has more skills to offer?
Questions with Talking Points for Discussion

1. **What were the ethical issues that Susan was confronted with this morning?**
   - Employee Safety and OSHA issues
   - New product line
   - Competing insurance carrier is unaware of driver issues
   - Handing insurance information to another broker without telling the current broker
   - Premium increase
   - Conflicts of interest

2. **What should Susan be looking at when reviewing the Gleeco contract? Should she just turn to the insurance section?**

   Many elements of an insurance contract impact risk management, not just the insurance section. Susan should read the entire contract and in particular pay attention to obligations of each party.

   - When does Brotan’s responsibilities in the contract start? When do they finish?
   - Does Brotan need to indemnify Gleeco? Does Gleeco indemnify Brotan?
   - Who is responsible for the component parts when they are on Brotan’s property?
   - Are there any limitation of liability?

3. **When reviewing the various insurance options on the automobile insurance, what things should Susan consider?**

   - The current safety attitude of Brotan. Both the higher liability deductible and the retention of physical damage options rely on the ability to loss control. How does the posture on the OSHA issue speak towards Brotan’s safety attitude? Can Susan lead a change in the company’s safety attitude?
   - The liquidity of Brotan. Can Brotan handle multiple $100,000 deductibles in a short time frame should they experience “bad luck?” Is it possible to purchase an aggregate deductible? If so, what is the cost of such an aggregate?
   - An analysis of Brotan’s historical claims looking at frequency and severity. What is Brotan’s current working layer--the point where losses are easily predictable and by insuring them you are just trading dollars with an insurance company?
   - What are the pros and cons of moving the insurance to another carrier (assuming that the terms and conditions are the same as expiring)?
     - Pro: premium savings
     - Con: burning the current insurance carrier – most likely the current carrier would not accept the risk back should the new carrier not work out.
   - Can the broker provide a personal lines quote for the owner for his personal vehicles?
4. What do you think of a broker quoting insurance based on only copies of insurance policies and loss runs?
   - Pro: Quotes will come in using similar terms and conditions so quote comparisons can be made more easily.
   - Con: The new broker will be copying the current program rather than looking at it with a new set of eyes. Is the current program the best program? The message to the new broker, should this type of quoting be allowed, is “price, price, price.” Could this be why the current broker feels the account is price driven?

5. Why would the new broker want to look at all the insurance and not just the automobile?
   - Possible restructuring of the program
   - Possible reduction of premium in the other lines to offset the increase on the automobile
   - Possibly trying to win the business by offering better overall pricing

6. Should Susan tell the current broker?

7. How would you describe her current insurance program overall? Has it been crafted for long-range planning or short-term goals?

   From the limited information given, it appears that the program is very short-term oriented. The lines of coverage are split up between insurance carriers and there is no long-term relationship mentioned other than the 10-year relationship with the broker.

8. How might Brotan’s current operations benefit from a change in the way the insurance program is structured?

   Brotan is heading into a new riskier product line. The owner is also insuring his two teenaged sons under the corporate automobile insurance program. As risks increase, the number of carriers willing to quote the risk decreases. When the number of carriers are limited, long-term relationships with insurers may be the more prudent method of purchasing insurance.

9. Part of Susan’s performance goals are related to premium savings. This creates a conflict of interest. How do you think this might affect her performance goals? Will Susan be making the best decisions for her company or making the best decisions for her performance review? Should her goals be tied to the company’s goals?

10. Look at the RIMS Risk Management Professional Growth Model. Where do you think Brotan executives currently view the risk manager’s position?

   Entry-level risk practitioner. The vice president and CFO came to her for insurance purposes and to review a contract. The contract deal is almost finalized, but she was not part of the negotiating team nor was she brought into the “inner circle” when the prospect of the contract materialized. Susan is not empowered to use her skills to manage the insurance program or make any decisions.
11. Can Susan influence the risk management culture of the company with her current skills and background? What skills should she have to move up in the RIMS Risk Management Professional Growth Model?

- Financial skills (accounting, finance, etc.).
- A good understanding of her company’s vision, goals and challenges.
- A working relationship with the key personnel at the company, including operations managers, divisional managers and vice presidents. If she hasn’t already, she needs to visit the plants and get to know the key players. This type of relationship will develop her credibility with these people and give her the ability to influence change.
- Good presentation and communication skills.

12. What type of approach should Susan use with the executives to show she has more skills to offer?

From the information given in the scenario, the executives seem to be numbers driven. Susan should approach them using financial arguments.

- How might the ROI of the new product deal be affected should the premiums increase?
- What type of fines and increased costs might Brotan face should an accident occur due to a fall in the rail loading area?
  - The fines may increase if OSHA determines that Brotan knew that the fall protection was required and did nothing.
  - Most states give the employees the right to sue the employer when the employer willfully puts them in a position of certain harm.
  - There are already union issues at the plant. Should the union become aware of the fall protection issue, might they step in and begin to notify OSHA of other issues at that plant and other plants.
- What are the potential financial differences in looking at long-range versus short-term planning of their insurance program?
- Can Susan influence the safety attitude of the company with her current skills and background? If so, might there be an opportunity for her to influence change in the company, create a culture and demonstrate to the “C Suite” that she has more skills to offer?