

# MARSH



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January, 2009

## General Liability Claims Management

- Stacking the Deck

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## Discussion Overview

- Leakage
- Claims Philosophy
- Execution of Claims Management



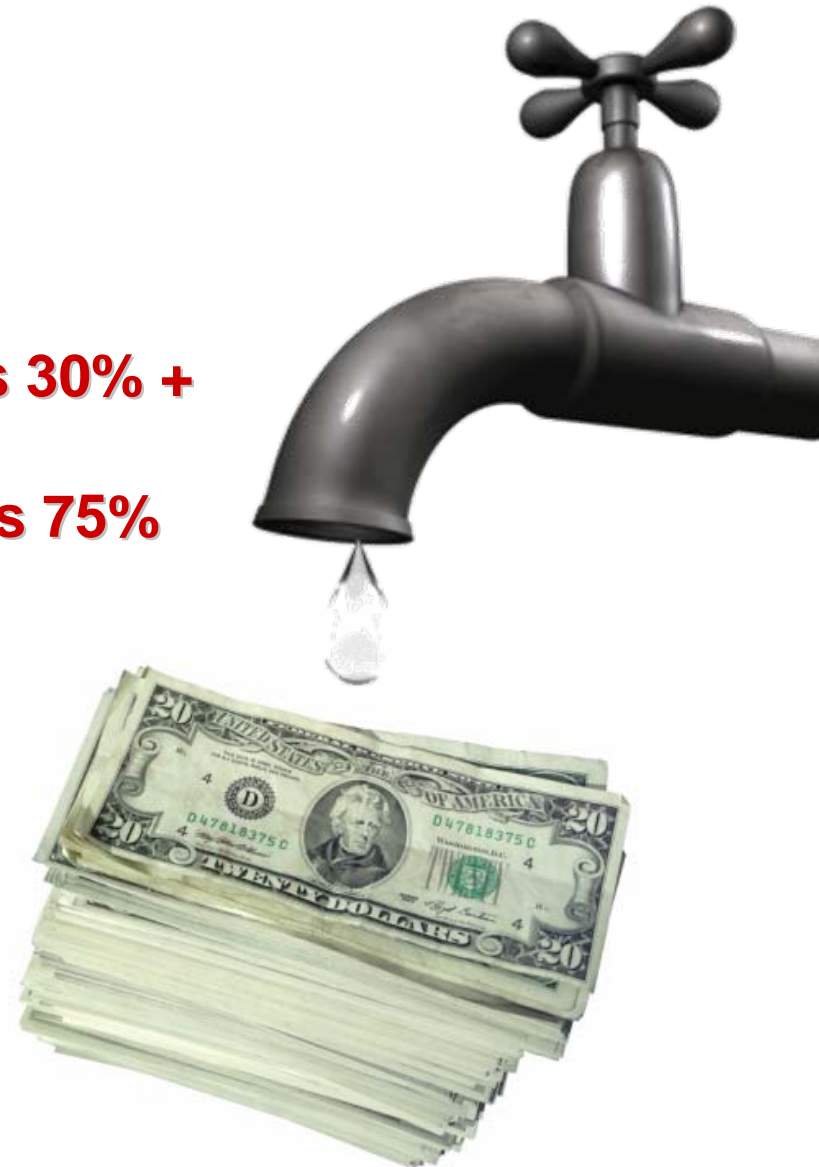
## Leakage

- Recognize leakage is occurring
- How much leakage?

**WC = 8 – 12% average, but as much as 30% +**

**GL = 16 – 24% average, but as much as 75%**

- Why are there “leaks” and where?



## Leakage – Why?

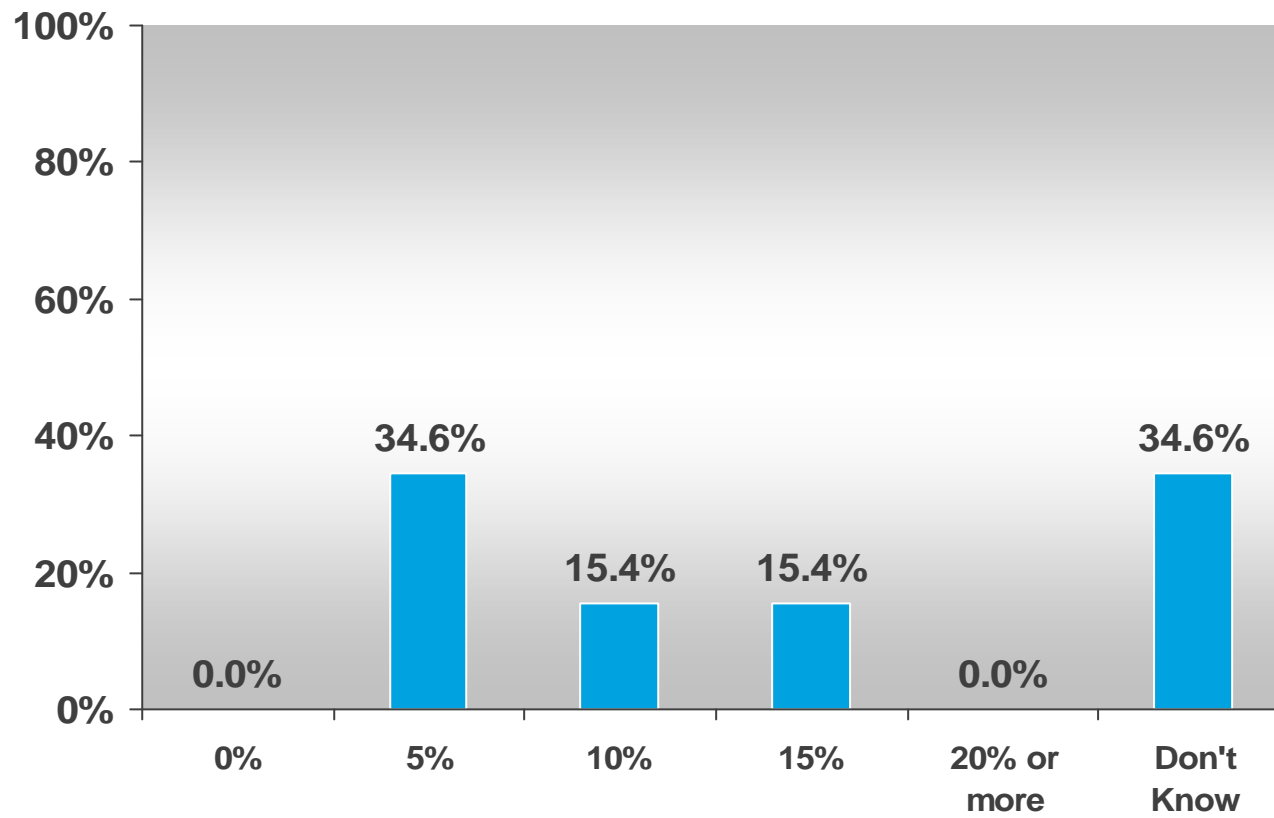
- Mistakes
- Lack of Claims Training/Experience
- Lack of Oversight
- Multiple Claim Handler Changes
- Caseloads Too High
- Apathy
- Lack of Strategy / Misplaced Strategy



# Survey Response

## Restaurant Risk Managers

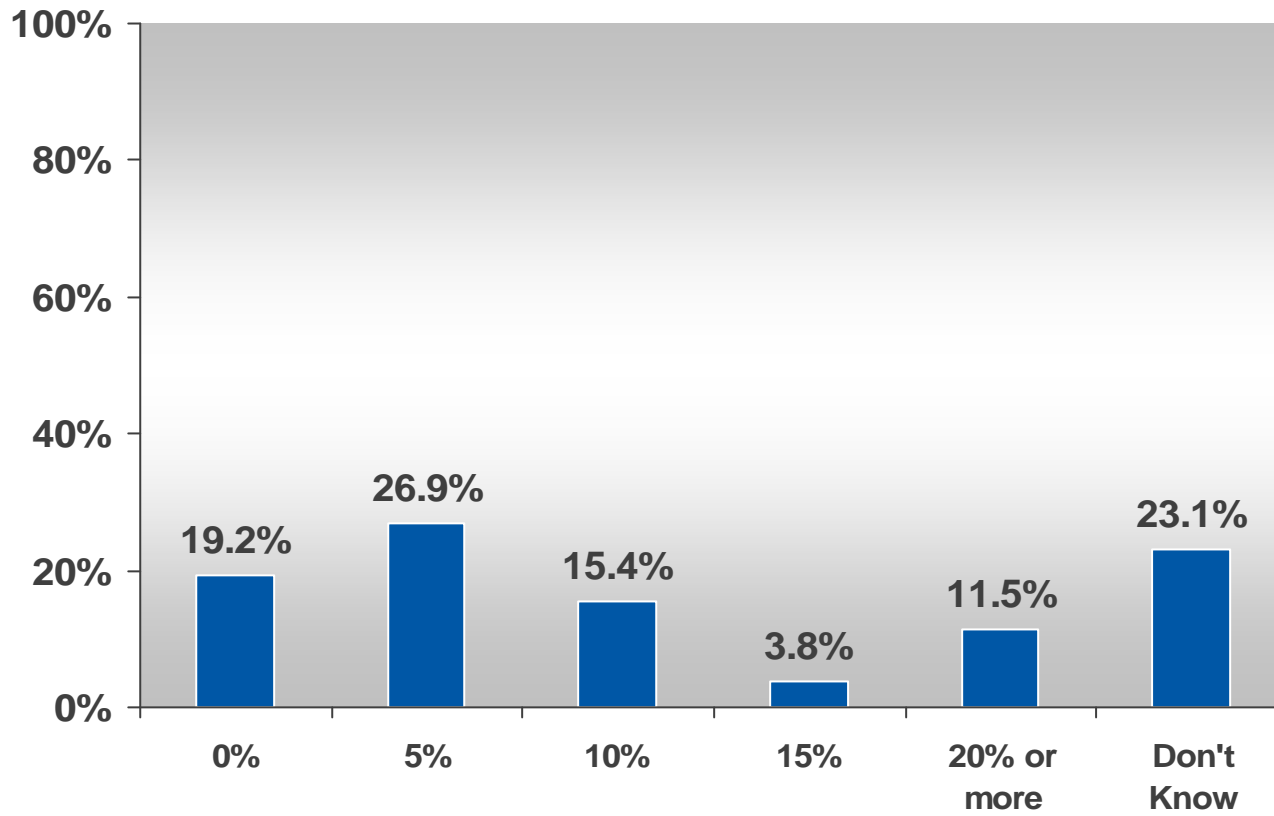
Estimated Workers' Compensation Claim Leakage



# Survey Response

## Restaurant Risk Managers

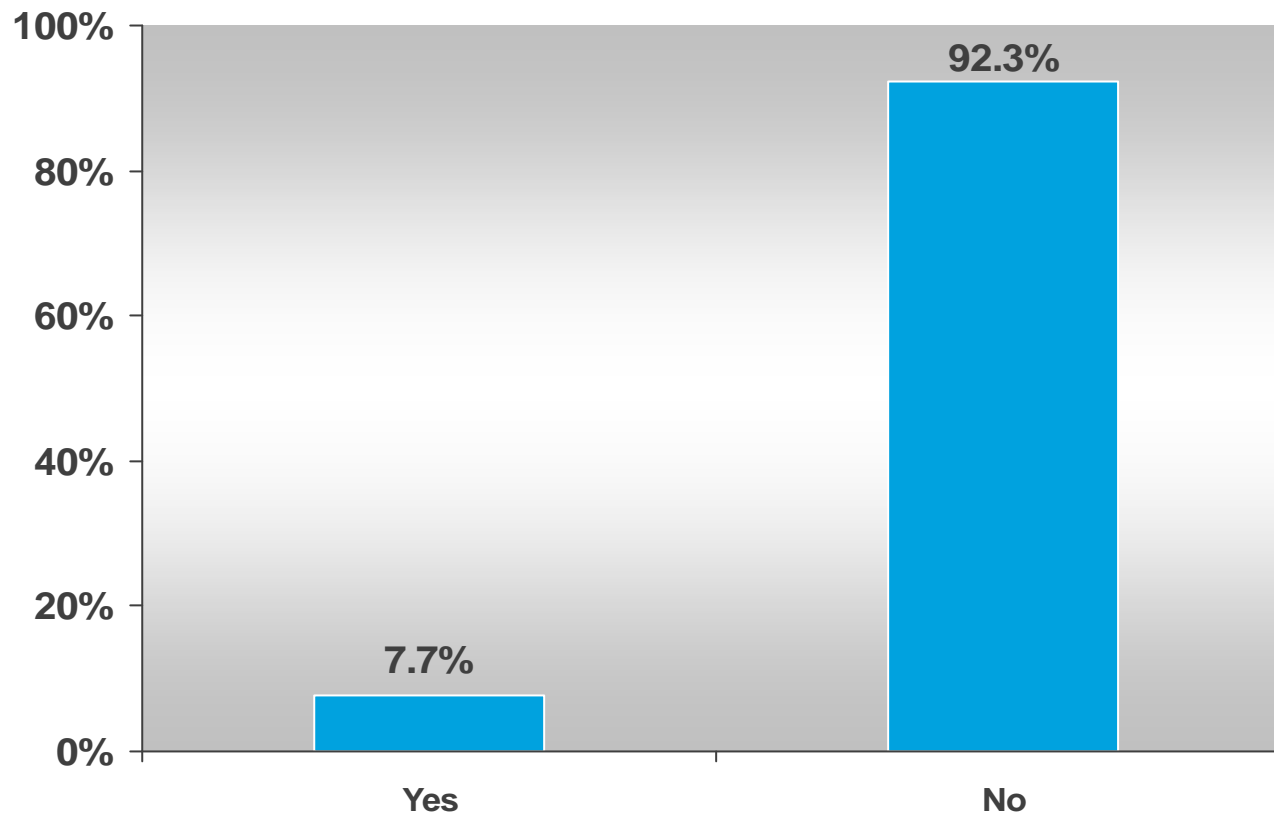
Estimated General Liability Claim Leakage



## Survey Response

### Restaurant Risk Managers

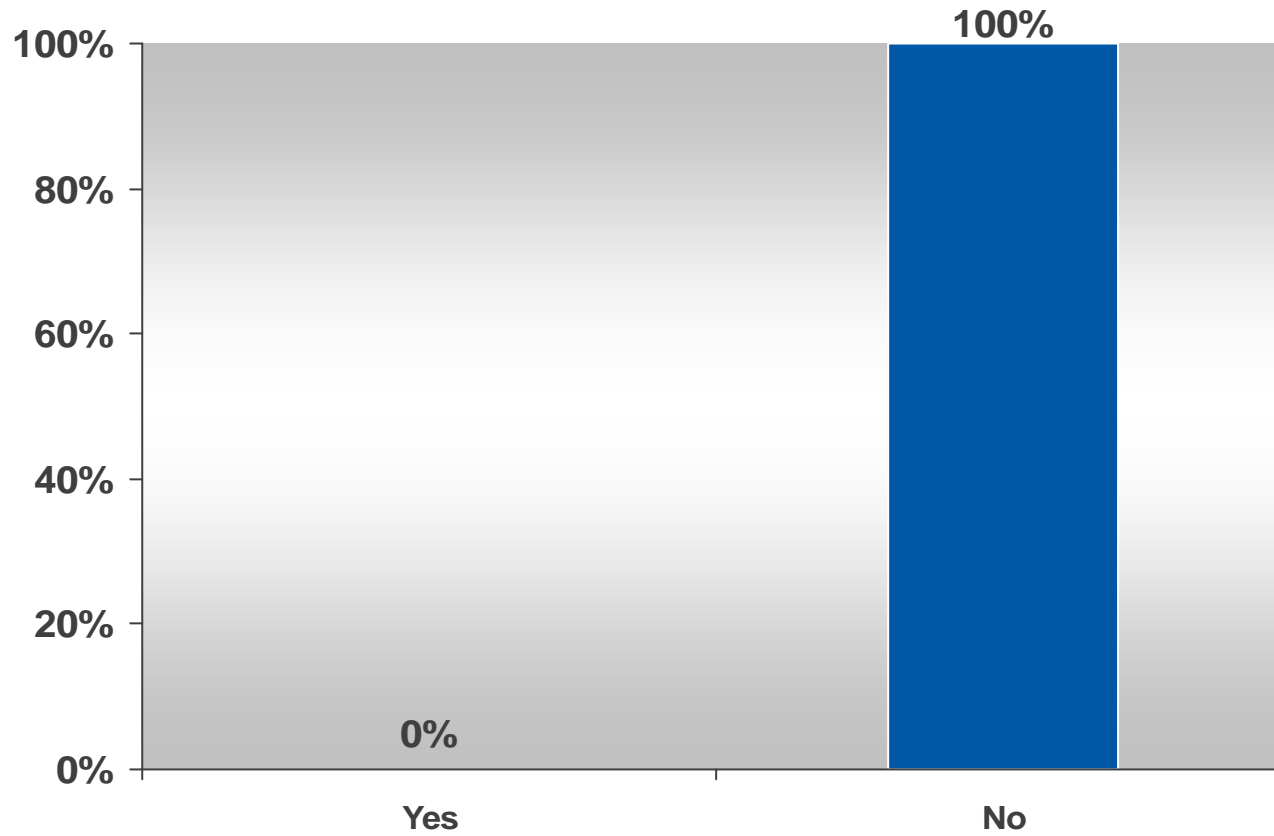
Have you ever attempted to measure the amount of workers' compensation "leakage"?



# Survey Response

## Restaurant Risk Managers

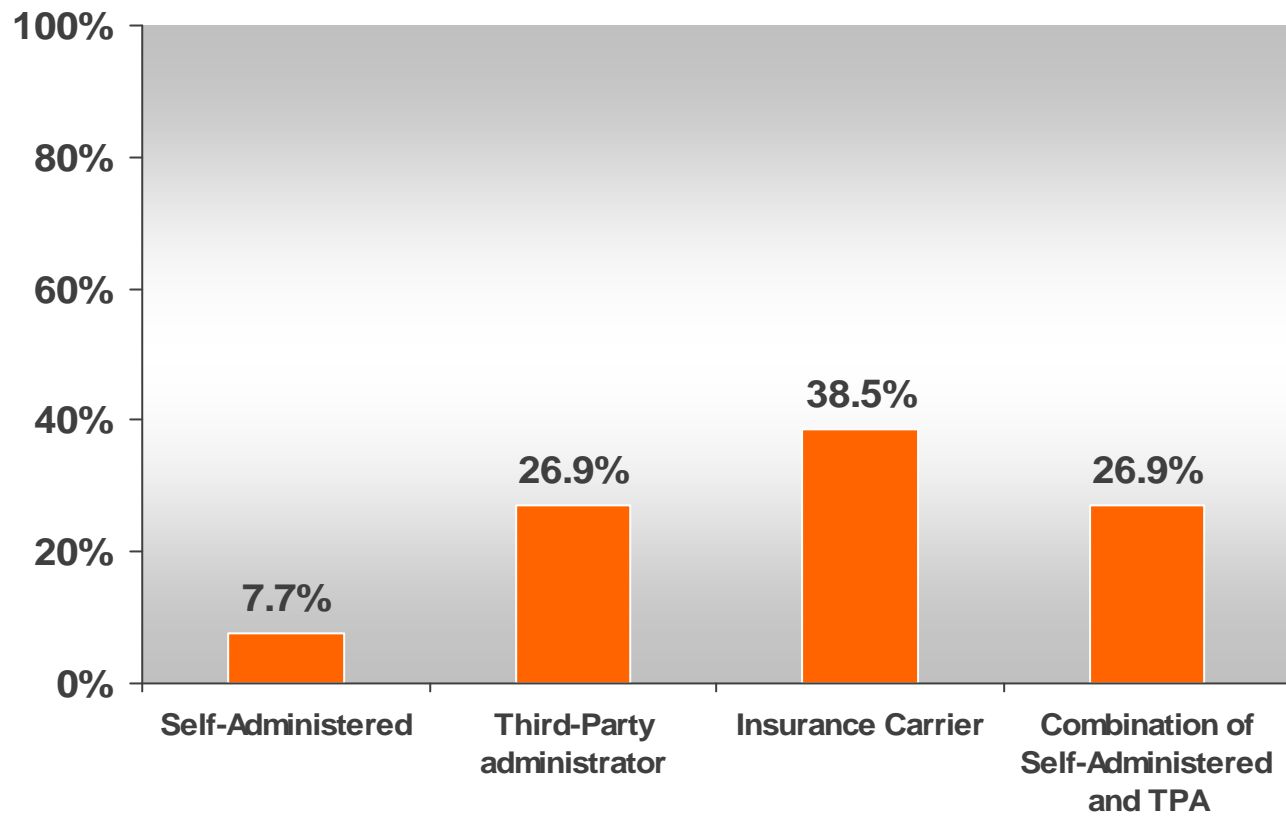
Have you ever attempted to measure the amount of General Liability "leakage"?



# Survey Response

## Restaurant Risk Managers

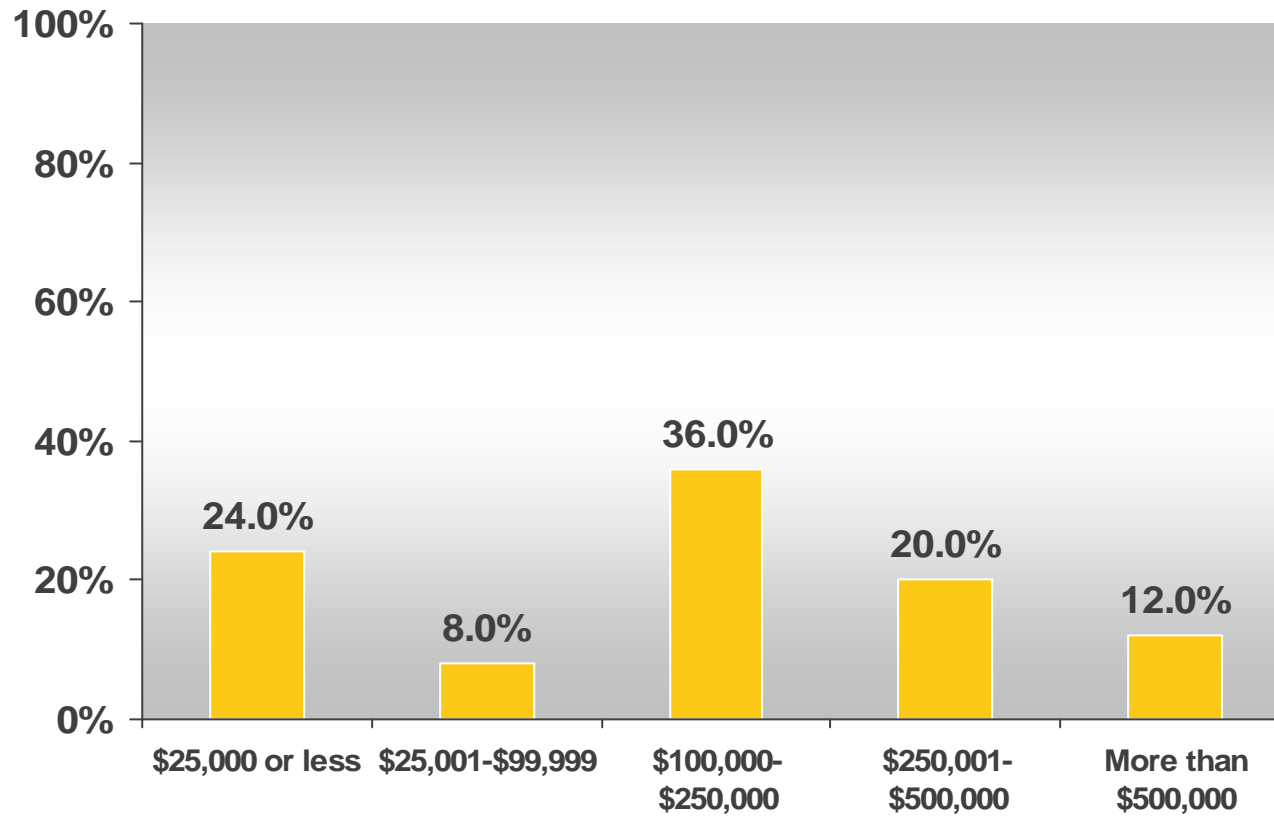
How are your General Liability claims administered?



# Survey Response

## Restaurant Risk Managers

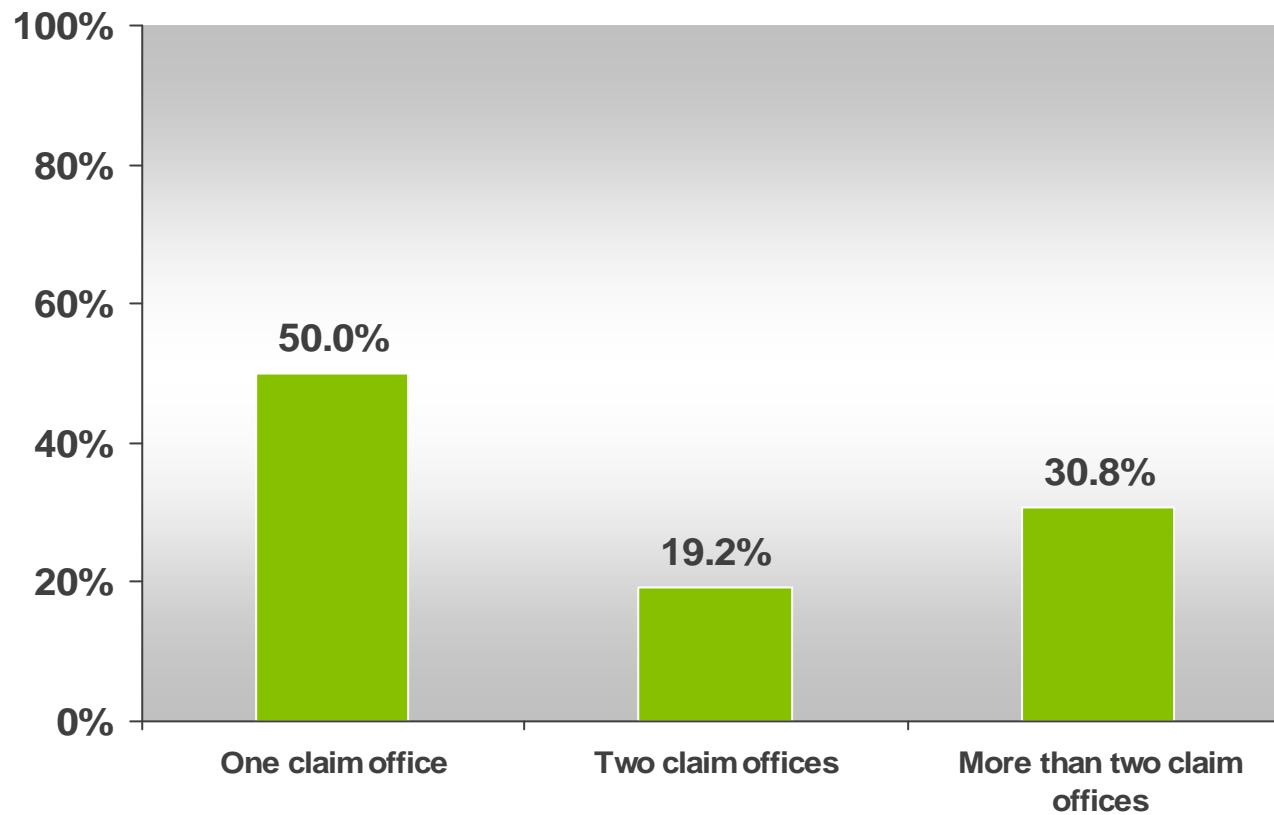
What is your retention or deductible for General Liability?



# Survey Response

## Restaurant Risk Managers

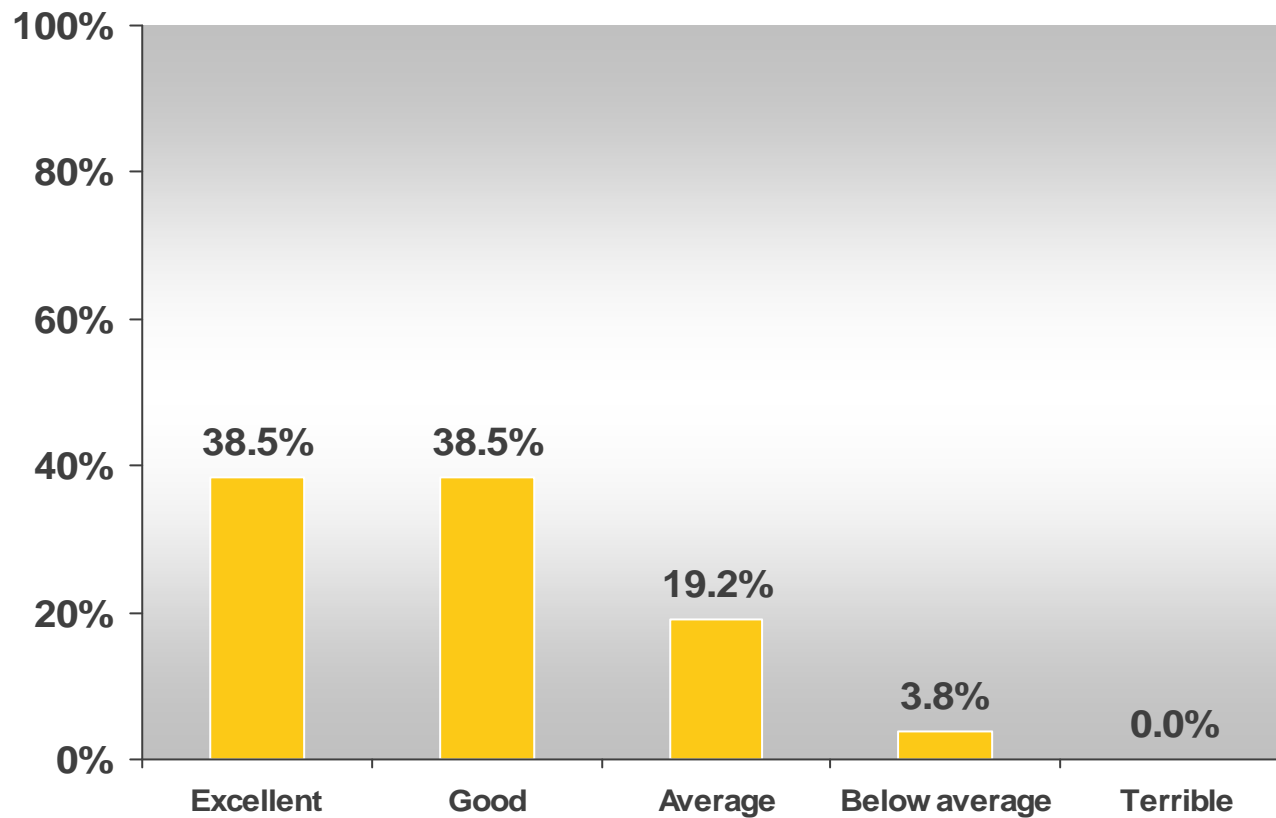
How many claim offices handle your General Liability claims?



# Survey Response

## Restaurant Risk Managers

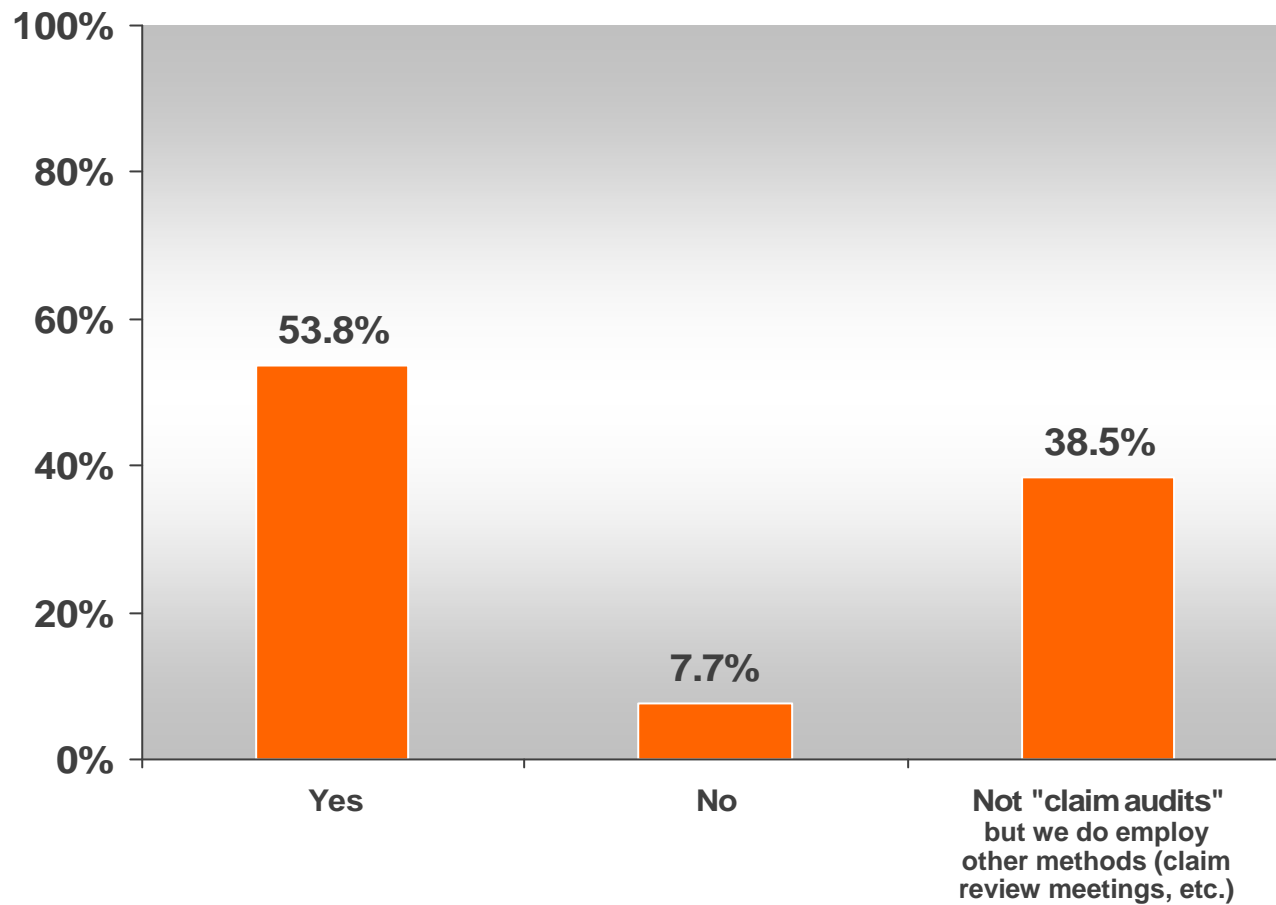
Rate the performance of your General Liability claims administration.



## Survey Response

### Restaurant Risk Managers

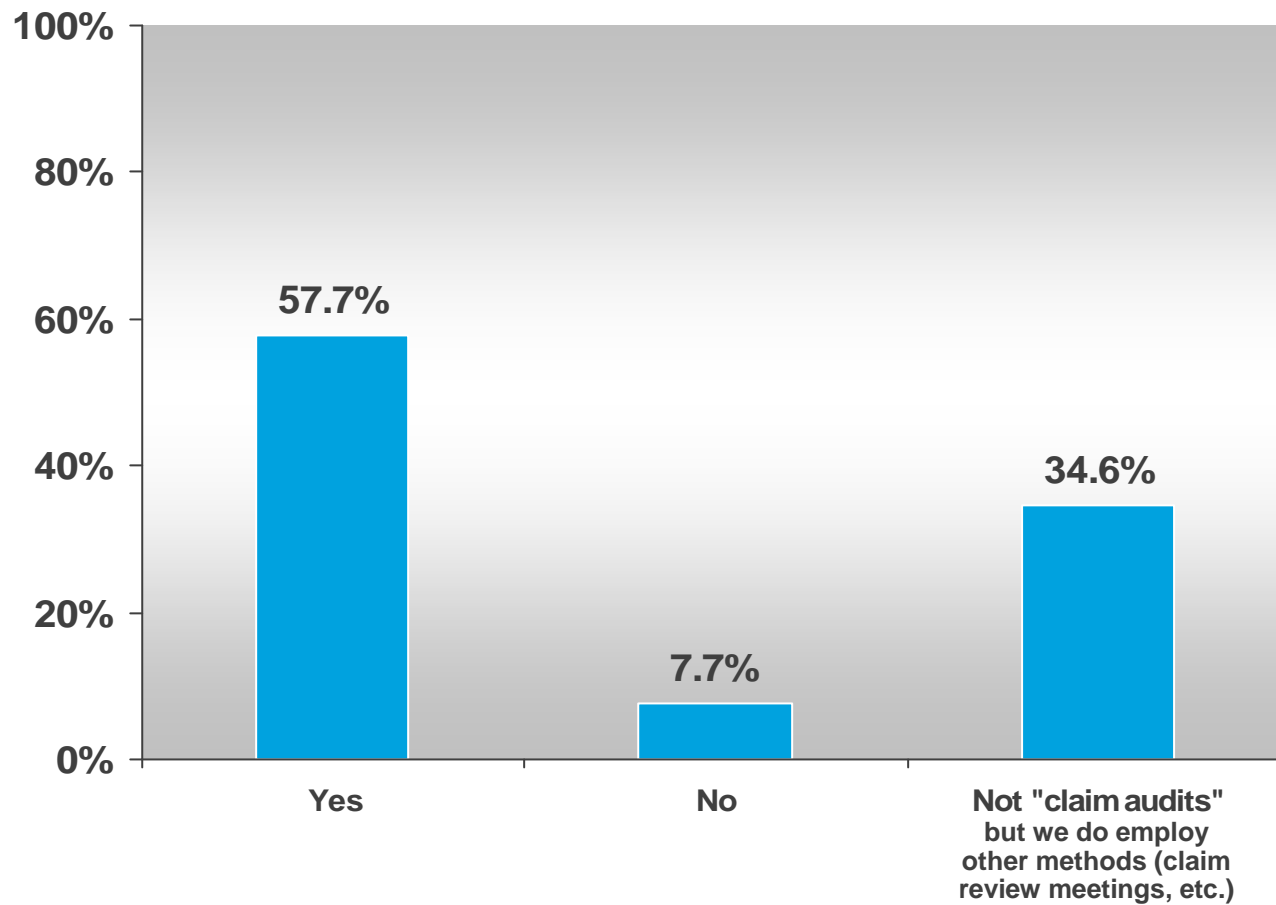
Do you, or someone on your behalf, perform Workers' Compensation claim audits?



## Survey Response

### Restaurant Risk Managers

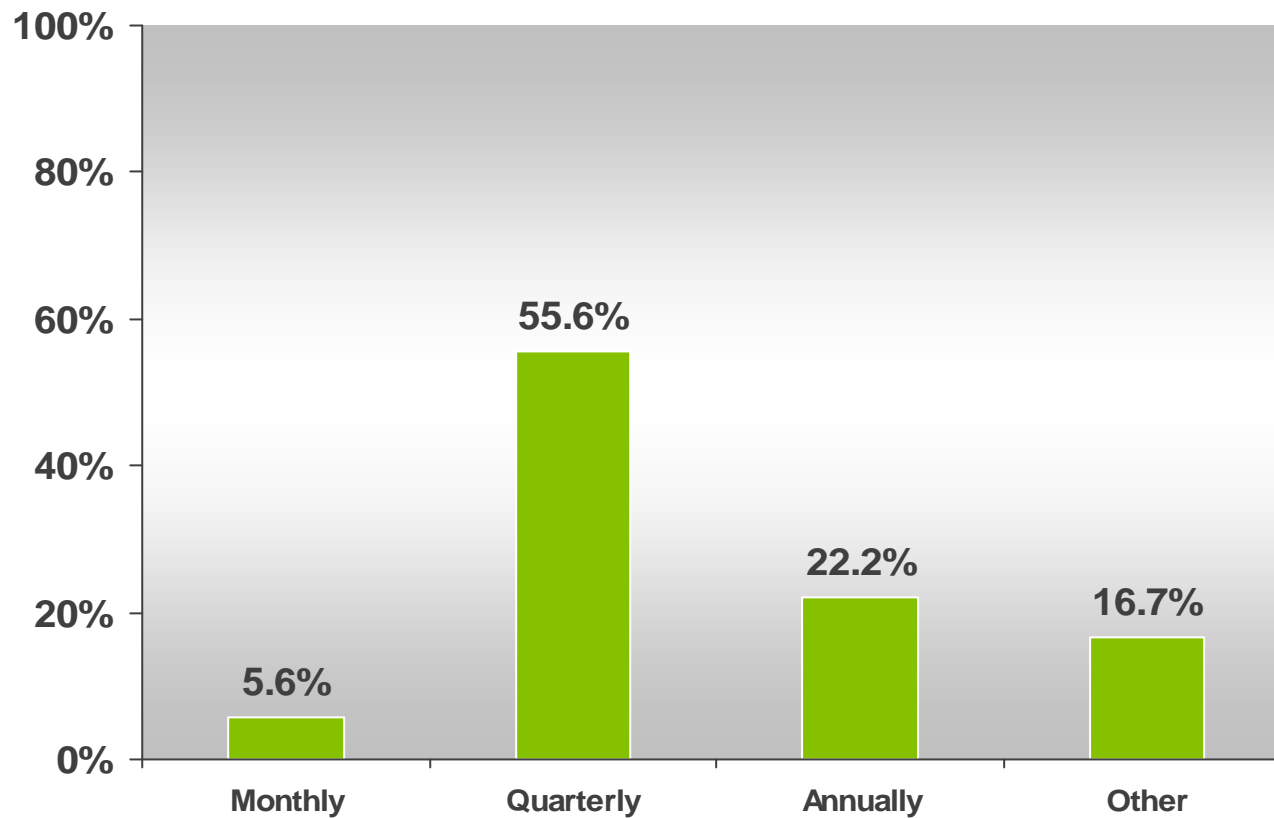
Do you, or someone on your behalf, perform General Liability claim audits?



# Survey Response

## Restaurant Risk Managers

If yes to claim audits, with what frequency?

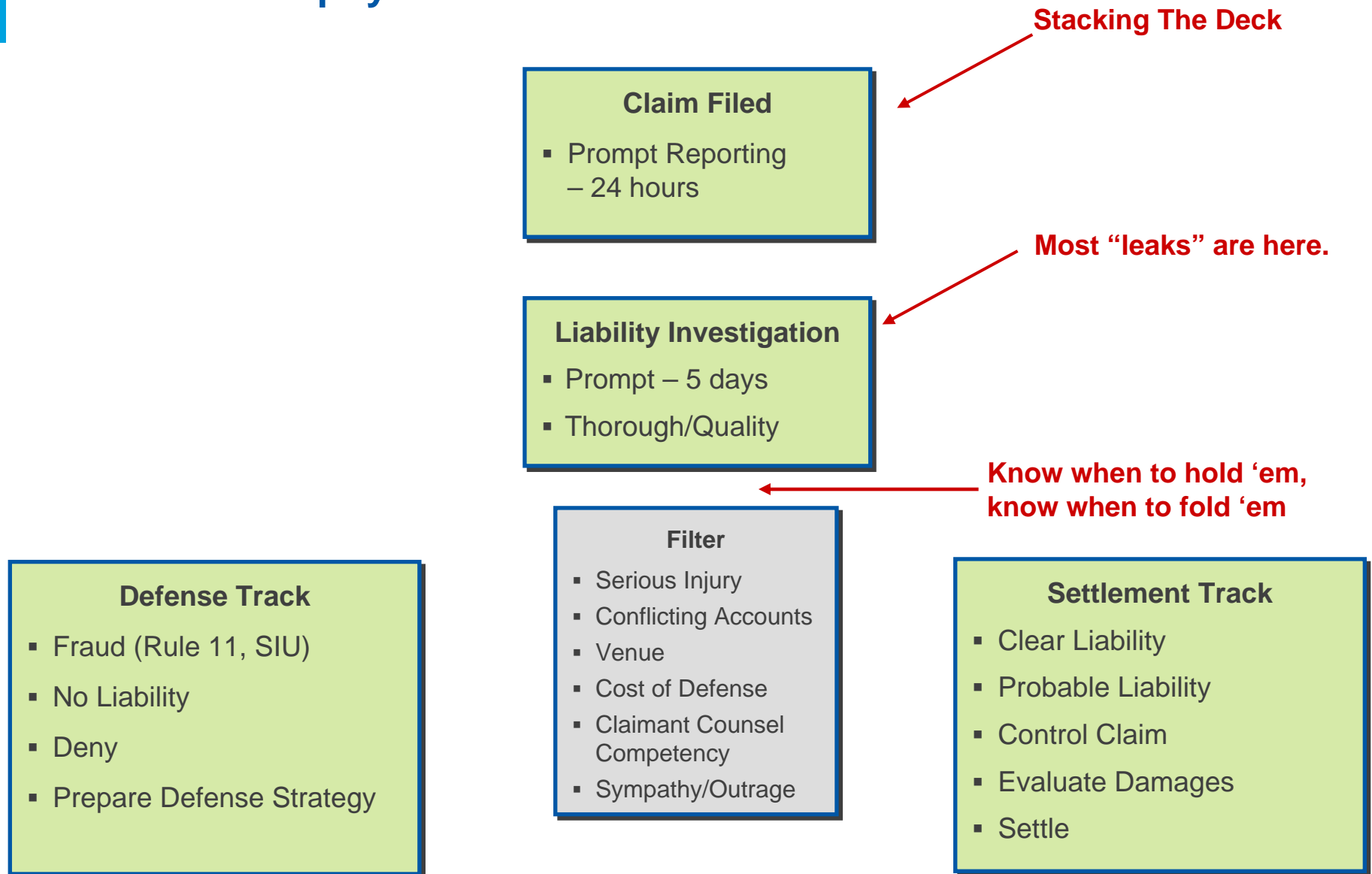


## Claim Philosophy

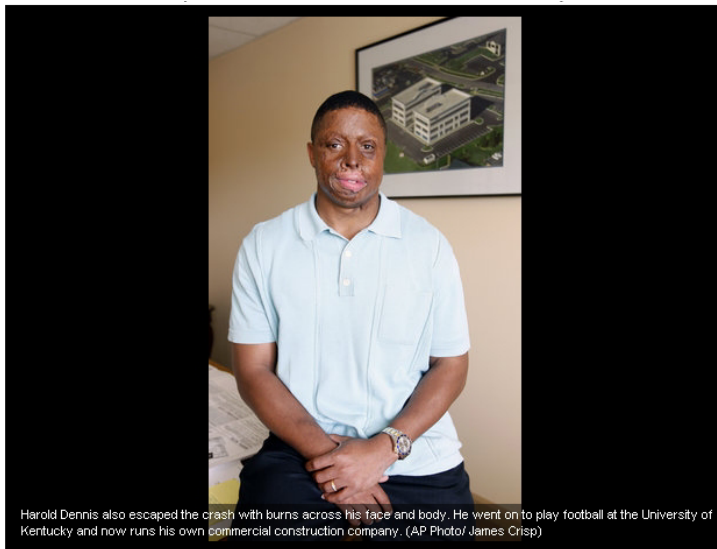
- By Design or By Default?
- Is It The Right One?
- Has It Been Communicated To Key Stakeholders?
  - Internally – CEO, CFO, GC, HR
  - Adjusters
  - Defense Counsel



# Claims Philosophy Framework



# A Disastrous Trip Home: The Carrollton Bus Crash



## Execution of Claims Management - Investigation

- Preparation/Legal Precedent
- Prompt
- Thorough
- **Quality investigation/statements**
- Index & Re-Index
- Site investigation
- Documents and records
- Preserve evidence
- **Civil and criminal background check; Google**



## Investigation - Case Study

- Elderly lady slipped and fell in restaurant. Husband says multiple fractures, including hip. No contact with employee witness for 3 months. No follow-up with claimant for 3 months.
- 84 year old lady tripped over a rug and fell. Reported in 24 hours. One claimant contact attempt. Rug not secured. Vendor contract not reviewed. First request by adjuster for the rug was 26 days later. No manager's statement for 6 weeks. Hostess statement not taken. \$100K demand.
- Alleged slip and fall in restaurant. One attempt at initial contacts, then 45 days. No statements from witnesses.





**If you want to make minor, incremental changes and improvements, work on practices, behavior or attitude. But if you want to make significant, quantum improvement, work on paradigms.**

*Stephen R. Covey*

## Execution of Claims Management - Liability Determination

- Duty owed
  - Reasonable / Ordinary care
  - Legal precedent
- Breach of duty
  - **Constructive or actual notice**
  - **Open and obvious**
- Proximate cause
- Damages



## Liability Determination – Filter

- Serious Injury
- Conflicting Accounts
- Venue - Judicial Hellholes 2008 - 2009
  1. West Virginia
  2. South Florida
  3. Atlantic City, N.J.
  4. Montgomery & Macon Counties, AL
  5. Los Angeles County
  6. **Clark County, Nevada**
- Cost of Defense
- Claimant Counsel
- Sympathy/Outrage



American Tort Reform Foundation

## Liability Determination - Case Study

- Claimant, self-admitted “klutz” was on the sidewalk in front of the restaurant, backing up to take a photo of her family, when she fell.
- Claimant states she fell due to curb being in poor condition.
  - Willman v. Azalea  
When plaintiff stumbles on steps that are clearly “crumbly and fragile,” a claim for personal injury is precluded as the condition is open and obvious.
- Claimant, 87, legally blind, walking out door, held open by employee, falls. Meds are \$100,000.
- Claimant bit into a bacon bit. Adjuster: “liability questionable to probable.”
- Alleged slip/fall in rest-room. Multiple red flags. Settled for more \$1,500, more than the initial demand.



## Execution of Claims Management - Prompt Liability Decision

- Deny – explain why!
- Compromise – keep control



## Execution of Claims Management - Claim Evaluation

- Medical records
- Wage & **Tax records**
- **Liability theories and defenses**
- Witness credibility
- **Collateral Sources**
- Venue
  - How are juries valuing cases (liability and damages)?



## Kentucky Verdicts

### 1998 to 2007 - Premises Liability

- Win-Loss Percentage

– Northern Kentucky	14%	(22 cases)
– Far Western Kentucky	63%	(24 cases)
– Overall	46%	(250 cases)

## Trials in Kentucky

- Total Trials

- 1998 = 617

- 2007 = 278

- Premises Liability

- 1998 = 10%

- 2007 = 6%



*The Kentucky Trial Court Review*

## Kentucky Trials 2000 to 2007

▪ Fall in Burger King parking lot	\$168,000
▪ Slip on wet Ponderosa floor	\$47,500
▪ Wet floor at Lee's Famous Recipe	\$2,791
▪ Fall on ice cubes outside of O'Charley's	\$0
▪ Fall on tray at McDonald's	\$0
▪ Fall on uneven sidewalk	\$1
▪ Fall on black ice	\$0
▪ Fall in peanut hulls at restaurant	\$0
▪ Seat at Burger King collapse	\$52,357
▪ Trip on steps at restaurant	\$43,568
▪ Blind woman fell exiting restaurant	\$0
▪ Snowy McDonald's parking lot	\$0
▪ Greasy bathroom floor at Frisch's	\$0
▪ Wet floor at McDonald's	\$0
▪ Painted ramp at Shoney's	\$42,902
▪ Water puddle at Joe's Crab Shack	\$11,000
▪ Raised seat at Fifth Quarter	\$0
▪ Elevated booth at restaurant	\$0
▪ Sidewalk ramp at Fifth Quarter	\$89,823

## Kentucky Trials

### 1998 to 2007 – Injury Multiplier

<b>Case Type</b>	<b>Multiplier</b>	<b>Suffering Average Verdict</b>
Soft-Tissue Injury	1.678	\$12,907
Disc Injury	3.272	\$59,137
Wrist/Hand Injury	2.823	\$37,033
Ankle Injury	2.727	\$56,444
Knee Injury	3.950	\$65,427
Arm Injury	4.487	\$101,319
Shoulder/Rotator Cuff Injury	2.677	\$48,510
Pelvis/Hip Injury	3.816	\$155,877
Broken Leg Injury	3.262	\$135,573
Brain/Head Injury	13.278	\$614,073
Emotional/Psychiatric Injury	4.603	\$53,284
Facial/Dental Injury	6.493	\$72,882
Smell/Taste Injury	7.626	\$112,857

*The Kentucky Trial Court Review*

## Kentucky Trials

### 2005 to 2007 – Chiropractic Verdict

- Average verdict = \$11,173
- Average medicals = \$8,388
- Average suffering award = \$3,057
  
- Injury Multiplier = 1.33

## Claim Evaluation - Case Study

- Part of a latex glove in food. Fear of hepatitis. Paid \$5,000.
- Claimant wearing high heels slipped and fell in the restaurant getting out of booth. Soft tissue knees and back. First contact with claimant took 6 days. First attempt to contact witness took 7 months. Claimant demand when unrepresented was \$2,500. Venue: Judicial Hellhole.



## Execution of Claims Management - Resolution/Negotiation

- **Recognize when to settle early**
- Preparation for negotiations
- Know your opponent
- **Opening offer**



## Execution of Claims Management - Litigation Management

- **Starts Before Litigation**
- **Appropriate Litigation Plan**
- **Excessive Reporting**
- Attorney Selection
- Offer of Judgment – Rule 68
- **Mediation**
- Mock Trial
- Online Focus Groups
- High/Low
- Experts



## Litigation Management - Case Study



- Alleged bone in “boneless” meat. Claim not tendered to supplier for more than one year. Supplier contract not obtained. Menu not reviewed. Statements not taken. No past dental records obtained.

## Other...

- **Data Integrity**
- **Subrogation**
- **Reserves**
  - Probable outcome
  - Self-fulfilling prophecy?
- **Aged claims**
  - Closure Rates
  - Total Incurred / Outstanding Reserves
- **Metrics/Benchmarking**
  - Legal Fees
  - Claim Duration
  - Average Claim Cost
  - Percentage Litigated
  - Percentage Represented
  - Percentage Closed No Payment



## Takeaways

- **Establish and Communicate a Claims Philosophy**
- **Drive Prompt, Thorough, & Quality Investigations**
- **Conduct Claim Audits**
- **Periodically Measure Leakage**
- **Utilize Metrics for Early Warning of Leakage**



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