

HR and Risk Management Forum

*presented by
Armida Vargas, KOSO Strategies,
Brenda Broberg, Willis Towers Watson,
and Robert Dahl, Amerind Risk*



AMERIND Risk
Tribes Protecting Tribes

Willis Towers Watson 



NNAHRA
NATIONAL NATIVE AMERICAN HUMAN RESOURCES ASSOCIATION

HR and Risk Management Forum

We do this because our hearts are on fire to help every tribe protect and preserve sovereignty.

We have over 40 years of experience working with Tribal Nations.

We understand the issues tribes face.



HR and Risk Management Forum

Shared Vision requires the support of more than 1 person:

- ✓ Utilize partners – ask questions

- ✓ Partners can be –
 - Internal employees
 - Tribal Attorney
 - Brokers/Agents
 - Enterprise Staff (Casino Risk Management Department)
 - Fellow HR Practitioners



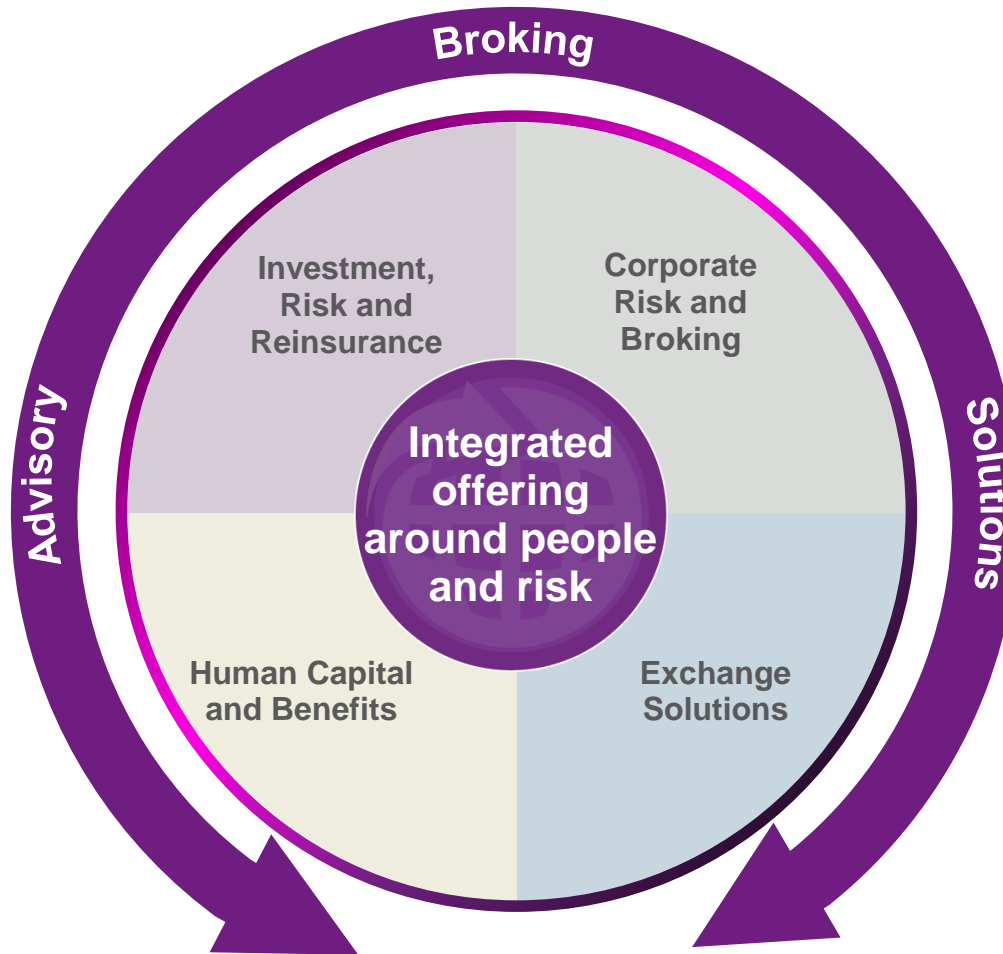
HR and Risk Management Forum

How do we accomplish Shared Vision in our daily HR practices:

- ✓ Work with brokers/agents when drafting codes, policies and procedures
- ✓ Develop training programs in coordination with partners
- ✓ Find opportunities to stay up to date on best practices
- ✓ Conduct HR department audit utilizing partner input:
 - **Benefits**
 - **I-9's**
 - **Job Descriptions**
 - **Personnel Files**



Willis Towers Watson is an integrated advisory, broking and solutions company organized around four business segments designed to meet our clients' risk and people needs



Willis Towers Watson Tribal Expertise

Tribal Sovereignty

Self sufficiency,
sustainable communities,
tradition, and economic
growth

**Sovereignty – The right to
Self Govern**

Leaders must protect and
promote sovereignty-
embracing it through the
creation and enforcement of
policy, ordinance, regulation,
and law.

**Diverse Population
Segments**

**Government &
Enterprise**

Uncertain Legislative
Environment

Tribal Benefits for Life

**Proprietary Tribal-centric
Contract Terms**

Tribal Health

Willis Towers Watson Tribal Expertise

Human Resources

Communication, employer guides, enrollment, benefit education, traditional & digital solutions

HR Procedures-Federal/State Analysis, HR support/best practice guidance, limited policy review, Onboarding, Recordkeeping, Sample policies, checklists, forms

Leave Administration – family and medical leave, paid time off, parental leave, sick leave, state leave of absences

Dependent eligibility verification – Dependent & Claims Audit- Medical plans, dental, behavioral health, flexible spending and vision

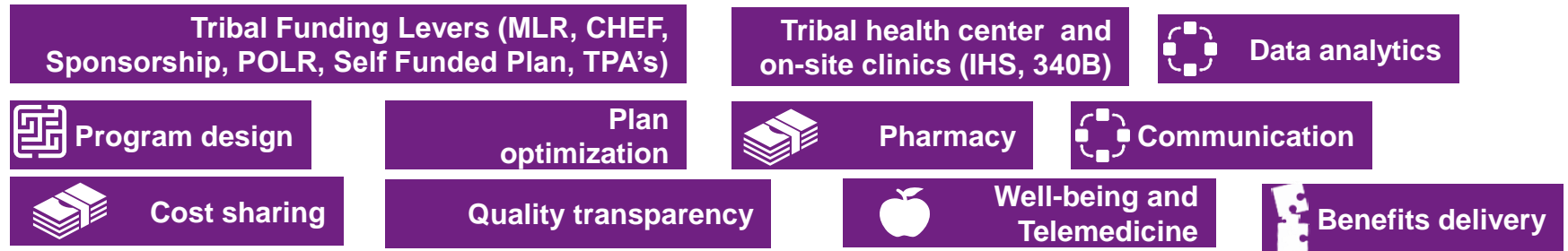
Talent Management – performance management, recruitment and selection, succession planning, workforce generational shifts, training and development

Brokerage and advisory partner – Health and Benefits and Risk Management

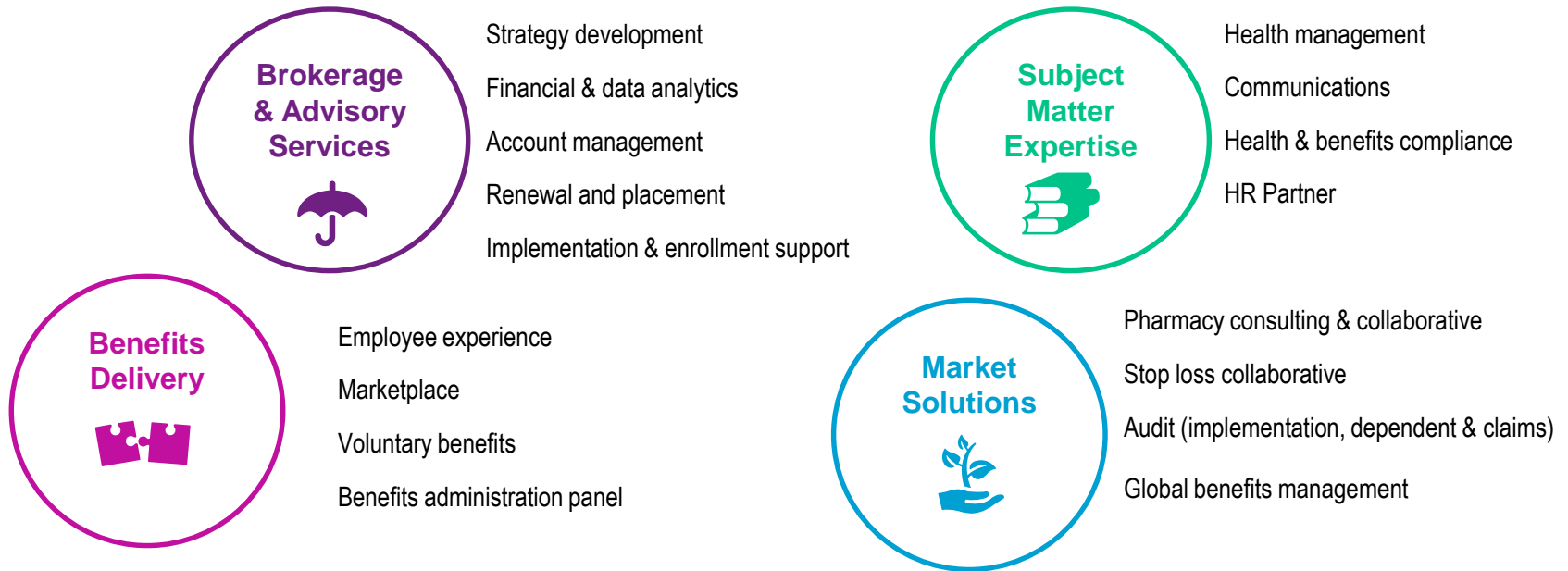
Compliance – Governance, Reporting, Best Practices, Form 5500 filing center, Plan Document Wellness, ACA, MPHAEA, HIPAA, ERISA, EEOC, Section 125, COBRA, – HIPAA Related Audits, HIPAA Settlements on the Rise

Total Rewards Strategy-compensation administration, compensation market pricing, competitive market analysis, employee engagement, flexible work arrangements, salary structure, work-life initiatives

Aligning Tribal and Willis Towers Watson Brokerage & Advisory levers is an effective Best Practices strategy for Tribal Nations



... With services, solutions, delivery and deep expertise



Assessing Risk & Best Practices

Four Quadrants of Risk

FINANCIAL <ul style="list-style-type: none"> ▪ Interest Rates ▪ Cost of Capital ▪ Subcontractor Defaults ▪ General Contractor Defaults ▪ Cost to Rebuild in Remote Locations ▪ Cost of Materials – Concrete, Steel, etc. ▪ Cash Flow Unable to Meet Obligations ▪ Business Interruption ▪ Inability to Satisfy Conditions with Lenders for Funding ▪ Labor Costs ▪ Escalating Energy Costs 	OPERATIONAL <ul style="list-style-type: none"> ▪ Shortage of Materials ▪ IGRA / NIGA ▪ Work Stoppages ▪ Construction Equipment / Materials Not Available ▪ Engineering, Environmental or Geological ▪ Healthcare regulations (incl HIPA) ▪ Loss of Key Employees ▪ Safety ▪ Employee Turnover ▪ Business Continuity Planning ▪ Continuity of Tribal Services
HAZARD <ul style="list-style-type: none"> ▪ Terrorism/NBC ▪ Foodborne Illness ▪ Construction Defects ▪ Property Damage ▪ Third Party Liability ▪ Flood, Fire, Collapse ▪ Professional Liability ▪ Child Molestation ▪ Pool Accidents / Drownings ▪ Sexual Harassment to Guests & Employees ▪ Safety & Security ▪ Environmental 	STRATEGIC <ul style="list-style-type: none"> ▪ Effects of Terrorism / Tourism in the region ▪ Reputation and Brand ▪ Integration of Retail, Hotel & Casino Operations ▪ Competition from Other Casinos / Hotels ▪ Legalization of Gaming in Other States ▪ Education ▪ Service Needs ▪ Population Changes ▪ Business Continuity / Disaster Planning ▪ Tribal Sovereignty

Best Practices

- Risk Control/Safety
- Security/Claims
- Risk Management
- Program Design
- Expense Management
- Claim Management
- Technology
- Contractual Risk Management
- Crisis Management and Business Continuity Planning

Leads to

- Economic Development
- Preserving Tribal Income
- Protecting Sovereignty
- Maintaining Brand Integrity
- Maintaining a Thriving Tribal Community

A Carrier Perspective

- Key considerations when analyzing a WC risk
 - Risk manager on staff
 - Safety committee
 - Internal policies and procedures
 - Pre-employment & post-accident drug/alcohol screening
 - Designated medical provider
 - RTW program
 - WC Ordinance
 - Claims adjudication process
 - Tribal forum to address dispute resolution
 - Contractual considerations
 - Gaming compact
 - Broker Servicing Capabilities



Case Studies

- WC: Waltrip (2012)& Mendoza (2018)
 - The rulings in these cases have defined the relative immunities between the Tribal Nation and their non-Tribal insurance company. Both of these cases have important implications for Tribal risk management and the development of Tribal workers compensation ordinances.



Waltrip v. Osage Million Dollar Elm Casino

- Supreme Court of the State of Oklahoma, 2012
- Despite Independent Medical Examination opinion, Insurer refused to authorize the surgery
- Waltrip filed a claim in the Oklahoma Workers' Compensation Court under Estoppel Act
- Insurer asserted that court lacked jurisdiction based on Tribe's sovereign immunity
- 12/9/10 the Oklahoma WC Court denied jurisdiction and dismissed claim
- Matter appealed to the Oklahoma Supreme Court
- Tribe's sovereign immunity does apply to Tribal enterprises
 - Tribe is immune from state jurisdiction but insurer is not
 - Contract of adhesion
 - No Tribal WC Ordinance
 - No Tribal forum to dispute adverse decisions



Mendoza v. Isleta Resort & Casino

- Court of Appeals of the State of New Mexico
 - Filed April 9, 2018
- Custodial Porter at the casino injured on 8/24/15
 - Claim reported immediately and sent to urgent care within 24 hours of incident
- Casino is a Tribal enterprise of the Pueblo of Isleta (a federally recognized Indian Tribe)
- Casino carried a policy for Sovereign Nation WC Insurance
- Claim was denied on 9/11/15 for late reporting
- Mendoza filed a complaint with the New Mexico Workers' Compensation Administration
- Workers' Compensation Judge dismissed complaint
- Mendoza appealed to the Court of Appeals



Mendoza v. Isleta Resort & Casino

- Decision reversed by Court of Appeals
 - Waltrip opinion figured prominently in this case
 - Waltrip was reviewed and found persuasive – growing precedential value
 - Holding Tribe enjoys sovereign immunity & policy did not subject Tribe's WC to state court
- Tribe's sovereign immunity does apply to Tribal enterprises
 - Tribe bound by 2015 New Mexico Compact
 - Tribe is immune from state jurisdiction but insurer is not
 - No Tribal WC Ordinance
 - No Tribal forum to dispute adverse decisions



Thank you

*presented by Armida Vargas, KOSO Strategies
Brenda Broberg, Willis Towers Watson,
and Robert Dahl, Amerind Risk*



AMERIND Risk
Tribes Protecting Tribes

Willis Towers Watson 



NNAHRA
NATIONAL NATIVE AMERICAN HUMAN RESOURCES ASSOCIATION

Contact Information

Armida Vargas

Partner, KOSO Strategies

- Email: midavargas@gmail.com
- Cell: 760-258-6452

Brenda Broberg

Director, Health and Benefits, Willis Towers Watson

- Email: brenda.broberg@willistowerswatson.com
- Cell: 920-660-1790

Robert Dahl

Amerind Risk

- Email: rdahl@amerindrisk.org
- Cell: 505-404-5000



NNAHRA
NATIONAL NATIVE AMERICAN HUMAN RESOURCES ASSOCIATION