

Insurance Times: Commercial Umbrellas What Businessowners Need To Know

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Determining the amount of property coverage to buy is a fairly objective task for most businesses. The value of buildings, contents, and equipment must be considered, as well as loss of income and other property exposures generated by operations. With a little research and input from resources such as real estate, accounting, and insurance professionals, a sound number can be calculated.

Unfortunately, determining an adequate amount of liability coverage is not as objective. How much is enough? Business Insurance, The Wall Street Journal, and many of publications contain articles on multi-million dollar verdicts, often stemming from exposures thought to be relatively innocuous. In selecting liability limits businesses need to consider:

- Current operations — what loss exposures can be foreseen from products and/or operations? Have acquisitions been made which have generated additional exposures?
- Prior operations — was a product manufactured in the past which is still in use and could result in liability claims?
- Auto exposures — too often businesses are only concerned if they operate a fleet of large trucks. Businesses should not overlook private passenger and hired and non-owned auto exposures.
- Contractual obligations — what limits of liability has the business committed to in contracts with others?
- Business needs — As a subcontractor, what limits are required to bid on desired jobs? As a product manufacturer, what limits are required by retailers and/or wholesalers to carry the product?
- The value of the business — what is the business worth?

Building Limits

In building liability limits, most businesses begin with standard commercial general and auto liability policies providing limits of \$1,000,000. Additionally, they will usually carry a workers compensation and employers liability policy. This policy typically provides primary employers liability limits of \$500,000.

To increase these limits, an umbrella policy is usually purchased. Unlike most of the primary general, auto, and employers liability policies, there is no standard umbrella coverage form. Each insurer has developed its own umbrella coverage form and there are dramatic differences. In selecting an umbrella insurer, businesses should go beyond comparing the premium. They should carefully review the financial strength of the insurer and all coverage forms. It is recommended they seek an extensive amount of input from an insurance professional. The following list provides a good start for things businessowners should consider when selecting an umbrella policy:

"Indemnify" versus "Pay on Behalf" Wording — Forms vary as to which of these wordings are used in the Insuring Agreement. With the "Indemnify" wording, the insurer is not required to reimburse the insured until a legal obligation is determined. It may become necessary for the business owner to use their own funds for defense and damages before the insurance company is obligated to reimburse them.

Defense — Some forms provide defense in addition to the policy limits while other forms include defense within the policy limits. Still others offer no defense protection. If defense expenses will erode the policy limit, higher limits of liability should be considered.

Punitive Damages — Some forms will cover punitive damages if it is not disallowed by state law. Other forms exclude such coverage.

Occurrence — The definition of "occurrence" varies by form. Be sure the wording is adequate to cover Personal Injury, Advertising Injury, and Occupational Disease claims.

Umbrella Aggregate Limit(s) — Does a single aggregate limit apply or does the aggregate apply separately for the various coverages? If the umbrella policy has only one aggregate, the overall coverage provided is reduced.

Retained Limit — If a retained limit applies, is it met by indemnity payments, only, or will defense expenses also be included in this amount?

Drop Down Provision — This provision describes the extent to which the umbrella policy will replace or continue in force as primary insurance in the event of the exhaustion or reduction of underlying aggregate limits. This wording

varies dramatically from one form to another and it is important to understand how the policy responds.

Policy Territory — Most, but not all, forms are worldwide in scope.

Who Is An Insured? — Is this wording at least as broad as the wording in any primary policies? Are restrictions imposed as respects contractually required insured status?

Uninsured/Underinsured Motorists Coverage — Some forms will provide this coverage over primary auto policy and some will not.

Pollution Coverage — Some forms provide limited coverage while others exclude pollution on an absolute basis.

Care, Custody, and Control Exposures — Some forms provide limited coverage.

Discrimination Coverage — Most forms exclude employment related discrimination, but some umbrellas exclude all forms of discrimination.

Occupational Disease — Some forms exclude such claims while others do not.

Aircraft and Watercraft Liability — Some forms will provide coverage over primary limits. Others will not.

Notice of Occurrence — The requirements of this condition vary by carrier. Is the notice of an occurrence required in writing? Within a specified time period? Review this condition carefully as failure to comply could jeopardize coverage.

Maintenance of Underlying Insurance — If there is a change in the underlying program, is the businessowner required to notify the umbrella carrier? What happens if an underlying aggregate is exhausted?

Insolvency of the Insured and/or an Underlying Insurer — In the event of such an occurrence, how will the umbrella respond? Will the umbrella policy remain in effect or will the umbrella insurer's obligations cease?

Cancellation/Non-Renewal Provision — While insurers must comply with state requirements which are generally 30 - 60 days, many will provide extended cancellation and non-renewal notices up to 90 - 120 days.

And the list goes on. The importance of each of these issues will vary from buyer to buyer, but a business cannot assume it is adequately protected just because it has an umbrella policy in place. If a business encounters a liability loss which may impact its umbrella policy, the question which will most likely be asked is not "what was our premium?", but rather "are we covered?" By doing his homework and utilizing the resources of an insurance professional, a business owner will be confident the answer will be "YES!"

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