



## Umbrella Limits

### **Umbrella coverage is your best line of defense for general and auto liability catastrophes.**

When most businesses consider an umbrella insurance policy, they think about the premium cost and the possible benefits of the coverage. Some business owners may reach the immediate conclusion that they will never see a catastrophic loss, so there is no purpose to incur the cost. "I am not at risk. My business doesn't fit the profile for a significant loss. Why invest in umbrella coverage when I don't need it?"

When evaluating the need for umbrella coverage, consider these three questions:

- 1 What would be considered a catastrophic accident?
- 2 What do my customers require in contracts that I sign?
- 3 What is the amount of coverage I need to protect my assets?

### **Large verdicts create serious financial risk in California:**

**California Case:** Construction site litigation against a general contractor and a subcontractor. Plaintiff fell from an incomplete catwalk and the plaintiff sustained a back injury that led to lumbar fusions. A subcontractor, that was not the plaintiff's employer, settled the matter prior to trial for \$400,000. After thoughtful consideration, the general contractor made the choice to go forward with a civil trial. Result: A jury verdict against the general contractor in the amount of \$2,475,281.

**California Case:** Norika Uno's Toyota was struck by a vehicle driven by Olga Bello. Afterward, her Toyota suddenly accelerated off. It reached speeds of 100 MPH for over a quarter of a mile before her Toyota collided with a tree, killing Ms. Uno. The initial collision with Ms. Bello was a low speed impact between the two vehicles. After a hard fought, nine week trial in Los Angeles County Superior Court, a jury returned its verdict awarding \$10,000,000 to the husband and son of Ms. Uno.

The first example is not a classic catastrophic casualty accident because the plaintiff did not lose a limb or sustain a life changing closed head injury. Yet, there was a substantial jury verdict. The second example is a catastrophic accident and resulted in a surprise for Ms. Bello. The jury found no negligence against Toyota for any design or manufacturing defects. The entire verdict was against Ms. Bello!

### **Can your business satisfy a judgment in excess of your primary coverage of \$1,000,000 without umbrella coverage?**

Segue to more common issues: What about construction defect litigation with property damage allegations without the benefit of umbrella coverage? If you are a subcontractor on a large construction project, what is your risk? Some construction defect cases can easily run over fifteen million dollars to settle. If your construction company only has \$1,000,000 in primary general liability coverage and your share to settle a construction defect claim is \$2,000,000, your hope is that your primary insurance carrier will fully protect you and settle for the \$1,000,000. That will be the end of the problem, right? Most likely that hope is dashed by the general contractor for the project. Most general contractors have express indemnity rights built into their subcontracts. For your company to get the construction job, you probably agreed to defend and indemnify the general contractor for property damage. If your company has adequate assets, the \$1,000,000 (primary insurance funds) is not going to close the deal for \$2,000,000.

Be prepared to get out your check book. The general contractor or its insurer will demand full contribution for the property damage caused by your work. Salvation: If your company has a \$5,000,000 umbrella insurance policy, it can quickly satisfy the express

indemnity obligation and close the gap.

More risk to consider: Do you know that a primary commercial general liability policy has an aggregate policy limit? An aggregate limit is the most that will be paid on your behalf in one policy year for **multiple occurrences**. In other words, your primary insurance policy of \$1,000,000 has an aggregate limit of usually \$2,000,000. That is the maximum dollar amount your insurer will pay to settle more than one occurrence in a single policy year. If your company incurs over \$2 million in separate losses during one policy year, your primary insurer would only pay up to the \$2 million aggregate limit. It is known as aggregate exhaustion. Over \$2,000,000 for an uninsured loss is now your problem. Without the additional protection from an umbrella policy, this situation sometimes leads to a company's bankruptcy when they realize that the aggregate coverage was exhausted by previous losses.

What more can an umbrella policy do for your company?

**Crisis Response Coverage:** Most umbrella insurers will reimburse reasonable and necessary crisis response costs or provide crisis management for serious casualty losses. Having legal representation, media control and counseling experts available during a crisis is invaluable. An umbrella policy can help you protect your business' single greatest asset ... its reputation.

**Defense:** Once your primary insurance coverage is exhausted by previous claims, your umbrella coverage will be there to protect your company from civil litigation. Defense costs can be a significant risk. \$100,000 plus is not uncommon. Your umbrella insurer will step in, when your primary limits are previously exhausted, to pay for those defense costs. A substantial savings for your company.

**More Coverage:** Subject to terms, conditions and exclusions, umbrella coverage may also respond to losses not always included in primary insurance. The only caveat to this coverage is a self-insured retention that your company must first satisfy to trigger the umbrella policy. These self-insured retentions are usually as low \$10,000 for enhanced protection, but keep in mind that commercial umbrella insurance typically will not cover losses associated with

Errors and Omissions, Pollution or Employment Practices Liability claims.

As discussed above, your business may fit the profile of a high exposure casualty risk more easily than you think, so investing in an umbrella policy could be your company's best solution to protect your assets.

Contractors have more umbrella options available to them in 2015, and prices are stable. Pricing for \$5,000,000 in limits starts about 25% of your general liability premium. Contact your PentaRisk broker or account executive to get a quote.

**Contact Greg Roush, Vice President, Claims at 408.418.2736, [groush@pentarisk.com](mailto:groush@pentarisk.com), or your PentaRisk broker or account executive for more information on Construction *Umbrella Limits*. Visit our website at <http://pentarisk.com/>.**

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