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Umbrella Liability Insurance

Catastrophic losses are neither particular to specific areas of exposure nor to certain types of industries—and they can happen anywhere, at any time. Umbrella liability insurance closes the gap between underlying limits of coverage and possible claims in excess of that coverage. In recent years, it has become common for businesses, associations, and individuals to purchase this type of coverage, partly because today's juries often award huge sums of money to litigants. Prior to 1962, jury verdicts for a million dollars did not exist; since then however, thousands of verdicts for a million dollars or more have been awarded.

Umbrella liability insurance originated sometime in the 1940s when it was known as "blanket catastrophe liability insurance." The primary reason for its existence was to provide an extra layer of protection for companies or individuals who needed to have the gap closed between their standard coverage and the possibility of a catastrophic claim. Umbrella insurance can be purchased as a personal and/or commercial policy with high limits of coverage for catastrophic losses.

Because no "standard" umbrella policy exists, it is important to work closely with an insurance professional to design a policy that meets your community association's particular needs. Insurance professionals frequently work with a client to structure a policy that will reflect the needs and exposures of a particular company or individual. Sometimes these policies are called "excess liability," "catastrophe liability," or "blanket catastrophe liability" insurance. Whatever name is used, the primary function remains the same: to close the gap between underlying limits of coverage and possible claims in excess of that coverage.

We Already Have Insurance—Why Do We Need More?

Anyone who has read the fine print in most insurance policies has probably noticed a paragraph dealing with exclusions and another with policy limits. Frequently, liability contracts are limited to bodily injury or property damage. Although this may cover most typical insurance claims, there is also the possibility of injury to an individual that does not necessarily cause bodily harm, such as mental anguish, mental injury, shock, fright, humiliation, false arrest, invasion of privacy, or discrimination. Such exclusions could prove costly to a community association.

An umbrella policy serves two primary functions: 1) to provide higher excess limits of liability than those typically covered by underlying policies, and 2) to provide coverage for losses that may not be covered by standard underlying liability policies.

Although the whole point of insurance coverage is to shift the burden of payment of a claim from the business or individual to the insurance company, insurance companies will not pay more than the policy limits. The typical community association primary liability policy, for example, might have limits of \$1,000,000, which may not provide

adequate protection against claims made by someone who had an accident on association property. A standard liability policy might not provide coverage under certain circumstances. Filling in these significant gaps is the reason for obtaining umbrella coverage.

What's the Difference Between Excess and Umbrella Liability?

An excess liability policy provides coverage up to its limit of insurance for a covered loss above a specified amount. If, for example, a community association has a primary liability policy with a \$1,000,000 limit of insurance for bodily injury and an excess liability policy with a \$5,000,000 limit that includes bodily injury claims, the excess liability policy will only pay after \$1,000,000 of a bodily injury claim has been paid by the primary policy. An excess liability policy only extends coverage to claims covered by the primary, underlying insurance policy.

An umbrella policy, on the other hand, is broader than a straight excess policy because it extends or expands liability protection by covering some losses that would be excluded under the underlying insurance. Umbrella coverage is generally a "follow form" policy, which means it follows the insuring agreements and conditions of the primary insurance policy and also extends coverage beyond that provided by an excess liability policy.

Parts of the Policy

The Declarations page of a typical umbrella policy lists the name of the individual or business being insured and the policy's coverages, limits, and premiums. The policy period for most umbrella policies is usually one year. Such policies also list what the company agrees to do for the insured party, such as paying for defense or indemnification costs a business or community association may incur.

Umbrella policies often include self-insured retention limits, which require the association to meet certain specified retained limits for some coverages. Often, the retained limits are the same as the required limits for the underlying policies. A Self-Insured Retention (SIR) is similar to a deductible and applies to events that are not covered by the standard policy. For example, if an umbrella policy is subject to a \$10,000 SIR, a community association would be responsible for paying the first \$10,000 of a covered claim when the umbrella policy provides primary coverage.

The \$10,000 SIR would not apply when the umbrella policy responds on an excess basis. Community association umbrella policies should provide coverage for indemnification and defense costs. The umbrella policy insuring agreement should specify that these expenses are to be paid on behalf of the insured. It is preferred that defense costs be paid outside of the policy limits.

Exclusions

Although umbrella coverage is considerably broader than most underlying standard insurance policies, a few exclusions exist. For instance, intentional injury or damage might not be covered by an umbrella policy. Some catastrophes, such as pollution

disasters, are so great as to be ruinous to the insuring company, and these are sometimes listed as exclusions. Obligations incurred under workers compensation laws are routinely excluded, because the law mandates such coverage anyway. Generally speaking, property should be insured through property insurance, not umbrella coverage, although policies vary with regard to property under the care, custody, and control of the insured.

An Umbrella That Fits

Because no "standard" umbrella policy exists, it is important to work closely with an insurance professional to design a policy that meets your community association's particular needs. All major loss exposures should be identified so that appropriate coverage can be procured. It is very important that the underlying policy coordinates as much as possible with the umbrella policy. A community association umbrella policy should extend over the underlying general, auto, employers, and Directors and Officers liability coverages. A community association should study its risks, safety record, business operations in general, and current insurance coverage. In this way, the insurance company can determine possible vulnerabilities and either correct these situations or insure against them.

In Conclusion

Increasingly, community associations are finding it necessary to cover all their bases with regard to risk exposure. Although a standard insurance policy is obviously the front line in this defense, umbrella insurance is becoming the bottom line. Lawsuits are commonplace and juries are unpredictable when rendering judgments or awards, making the type of coverage provided by umbrella insurance a necessity. It is critical to review your association's legal responsibilities and insurance needs with qualified professionals, including your association's legal counsel. If you have any questions, please call Steve Dickerson at Morgan & Cheves (703-739-2346).

Chart

Owning property today can be hazardous to your financial health, particularly if anyone—resident, visitor, salesperson, contractor, or guest—is injured on your property. The following recent losses bear that out. Community associations owe it to their members to obtain appropriate umbrella liability insurance coverage for their specific situations.

Jurisdiction: Maine

Description: Tenant in a condominium complex fell down an improperly lit interior stairwell. Plaintiff suffered ankle, knee, and back sprains, chronic pain syndrome, inflammatory back disease, and also suffers from depression.

Case Result: Verdict of \$765,000 for multiple injuries.

Jurisdiction: Nevada

Description: A person was shot and killed in the parking lot of an apartment complex. It was alleged that the owner's general manager was aware of drug deals being conducted on the premises and failed to provide sufficient security.

Case Result: Verdict of \$12,600,000 for wrongful death due to negligence in providing proper security. The verdict included \$2,600,000 for punitive damages.

Ask The Expert

"Ask the Expert" is a regular column in Insurance Focus, featuring an interview with an expert about an important insurance issue facing community associations. This month our expert is Mr. Fabian A. Labat of Chubb & Son in Washington, DC. Mr. Labat is a Senior Account Manager in the Casualty Department and has over twenty years of insurance industry experience. He has also served as a board president of a homeowners association in Torrance, CA.

How important is it to have discrimination coverage in our association's umbrella policy?

Discrimination claims against third parties are increasing, particularly in the residential real estate arena. Unfortunately, discrimination coverage is typically excluded under a commercial general liability primary policy. In addition, not all umbrella policies provide coverage.

Title VIII and Title IX of the Civil Rights Act of 1968, known as the "Fair Housing Act," constitute a detailed housing law applicable to a broad range of discriminatory practices that are enforceable by the federal government. In 1988, the Fair Housing Act was amended by adding families with children and handicapped persons to the group protected by law. As a result, there is the potential for unlawful discrimination based upon the theory of disparate impact. Examples of activities by an association that could be interpreted as discriminatory are association covenants, rules and regulations that adversely affect families with children, or the unreasonable restriction of children's use of facilities or services that are available to adults, such as a pool or spa.

Under the disparate impact theory, a plaintiff must identify a rule, policy, or procedure, which although neutral at first glance, has an adverse effect on members of a protected class. Under this theory, it is not necessary for the defendant to have intended to discriminate, and even a defendant who undertakes a policy or procedure with the very intention of eliminating discrimination can be held fully liable.

Another scenario for potential exposure to an association is in the area of advertising, particularly with a new development that runs several features in the real estate section of the newspaper, in magazines, or on television. If the models used in the ads are not representative of the racial demographics of a particular area, it is possible that the advertising may be deemed "racially directed" and thereby in violation of the Fair Housing Act.

The award amounts or settlements may vary greatly, and in many instances, indemnification is not even paid. However, discrimination cases can be expensive to defend, and unexpected payments can disrupt the balance of even the most stable associations. Therefore, it is important to determine whether your umbrella policy

provides coverage for discrimination and to understand your association's potential exposure to third party discrimination claims.

(The information in this newsletter is taken from sources which we believe to be reliable, but is not guaranteed and is not necessarily a complete statement of all the available data. Conclusions are based solely upon our best judgment and analysis of technical factors and industry information sources.)