

FACING THE RISK

HOW MUCH IS ENOUGH? An Overview of Umbrella and Excess Liability Insurance Protection

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One of the most frequently asked questions by leaders of churches and Christian charities is... "do we have enough liability insurance? While most responsible organizations carry General Liability coverage in the amount of \$1,000,000 or \$2,000,000, such limits may no longer be adequate in light of the size and frequency of civil damage judgements being awarded in Canadian courts today.

Inadequate insurance coverage can arise due to one or both of the following standard policy limitations. The first is the "limit per occurrence" which is simply the amount of coverage available for damages arising out of a single claim. The second is the "aggregate limit" which is the total amount of coverage available for damages arising during an entire policy period, regardless of the number of individual claims or occurrences. Civil damage awards are clearly on the rise and threaten to exceed standard occurrence and aggregate policy limits, particularly for catastrophic bodily injury cases. However, it is difficult to quantify the extent of the trend or to confidently predict what level of coverage will ultimately be sufficient to cover any or all possible civil damage awards. There are several reasons for this uncertainty:

- i) Most bodily injury or personal injury cases are settled out of court and the terms of the settlement are often confidential.
- ii) Although some awards for compensatory damages are subject to monetary caps in Canadian courts, there is now a tendency for civil suits to include a component of punitive damages, which are not capped.
- iii) Measuring the adequacy of today's coverage limits is made extremely difficult by the fact that current claims may not actually come to light for years, especially in cases where the usual statute of limitations is suspended for underage injured parties.
- iv) Even when claims do eventually result in civil actions, injury cases can take as long as a decade to work their way through the pre-trial, adjudication and appeals process.

In fact, today's liability limits may conceivably be called upon to satisfy damages awarded by courts ten to twenty years into the future. For these reasons many churches and Christian charities are increasing their liability limits to as much as \$5,000,000, \$10,000,000, \$15,000,000 or more, to avoid insurance shortfalls in meeting future legal liability obligations which could jeopardize the assets of the organization (and its directors) and threaten its continued existence.

Most insurance companies will only underwrite a maximum coverage limit of \$1,000,000 or \$2,000,000 on a primary General Liability policy. The reason for this is that insurers prefer to follow the principle of "spread of risk" in order to avoid undue exposure on an individual risk. However, there are several options open to organizations seeking a greater quantity of liability protection, including:

- a) Some insurance companies have the capacity to increase the standard General Liability limit under a primary policy, either internally or through re-insurance.
- b) A separate Excess Liability Policy (Follow Form) can be arranged to pay the amount of damages remaining after the limit of the primary policy is exhausted.

c) A separate Umbrella Liability Policy can be arranged to satisfy judgements in excess of the primary policy, and has several other possible advantages over a purely Excess policy, including:

- Coverage can apply in excess of multiple underlying policies e.g. general liability, vehicle liability, some types of professional liability etc.,
- Coverage can often be broader in scope than the primary policy or policies, and
- Coverage can include a "drop down" feature whereby losses not covered by the primary policy may be covered by the Umbrella policy, not only for the excess limits but also from the first dollar of damages (net of retention).

The best option for additional liability coverage for your organization and leaders is dependent on a number of factors, including limitations under your primary policies, the scope and availability of Excess or Umbrella coverage and your premium budget considerations. Regardless of which option is chosen, now is the time to review the adequacy of your liability coverage limits and to consider insurance solutions to meet your present or future legal liability obligations.

INSURANCE TIPS

1) Liability limits should be chosen to adequately reflect the nature, scope and size of your organization's ministries and activities. For example, churches and charitable organizations conducting children's programs may be particularly susceptible to catastrophic and multiple bodily injury or abuse claims. Ownership of automobiles, vans and buses can also greatly increase an organization's potential legal liability exposure.

2) Avoid participating in joint insurance plans which contain a single limit of primary, Excess or Umbrella liability coverage shared by all plan members, as another organization's claim could adversely affect the aggregate limit of coverage available to your organization for a claim incurred in the same policy period.

3) Carefully review the scope of your primary and Excess or Umbrella coverage as extra premium spent on increasing the quantity of your coverage may not make up for inadequacies in the quality of your coverage content. For an overview of coverage elements which should be included in your liability insurance plan, refer to our "Liability Insurance Checklist" contained in CCCC Bulletin #4 - November 30, 1998

4) Make sure that the inception and expiry dates of your Excess or Umbrella Liability policy are identical or "concurrent" with your underlying primary policy or policies. Mixed inception dates can unintentionally result in an erosion of the primary policy limits available at the inception date of your Umbrella policy which can violate the "Maintenance of Underlying Insurance Clause" and create an unnecessary gap in your coverage.

For more information on Umbrella and Excess Liability protection, or any of the other unique coverage features available through the CCCC Group General Insurance Plan, please contact our office.

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