Preparing for the unexpected with Umbrella & Excess coverage

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One million dollars isn't what it used to be. The costs of litigation and adverse publicity can add up quickly for any business following a large loss. Jury verdicts are skyrocketing. What historically seemed like a commonplace liability claim could potentially turn catastrophic in the blink of an eye.

"We've seen many claims that when initially reported appear they can be settled for less than the primary insurance limit. But sometimes these claims can balloon to millions of dollars in what seems like an instant," said Michael Kirchgessner, Vice President, Umbrella & Excess underwriting at CNA.

Here are a few possible scenarios:

- A common occurrence we see in the news every day involves auto accidents. An insured employee who operates a motor vehicle while in the course and scope of their business, regardless whether it is his or her own vehicle or a company vehicle, causes an accident. The value of the claim changes depending upon the number of vehicles involved, the number of passengers involved, and the severity of the injuries. Is there a family involved; are there young children? Is another motorist or passenger a high wage earner who will no longer be able to work again? All of these factors add complexities to this scenario - is the settlement value of these claims worth $25,000 or $25 million?
- A third party contractor, a young man in the prime of his life with a wife and several minor children, is injured while unloading a piece of heavy equipment from the insured's trailer. Initially, the injury appeared to be a straight forward back injury until the individual suffered a stroke while in the hospital. Now the claim is much more than a back injury. The fact that the contractor was in a restricted area and was not following procedure will not reduce the overall settlement value of the claim. The injured worker's age and extent of his disability impact the settlement evaluation. What was thought to be a loss with a settlement value less than $1 million could potentially be valued in excess of $5 million.
- A distributor of a manufacturing product was responsible for warranting the quality control process of a product it distributed to a major box store retailer and manufactured by a separate entity. Unbeknownst to the distributor, the product manufacturer changed the formula of the product which resulted in substantial bodily injury to consumers. The manufacturer, the insured distributor, and the box store retailer all face exposure. Demands are in the tens of millions of dollars. The manufacturer only has $10 million in product liability insurance. The box store retailer is an additional insured under the distributor's policy. In this situation with multiple claimants and exposure well in excess of the manufacturer's policy, it is extremely important that the matter is handled properly due to adverse media publicity, potential devastating impact to the insureds finances, as well as making sure the insured retains an important business relationship with the box store retailer.

The above are just a few examples of the various scenarios in which your business—whether in the industry of construction, financial institutions, healthcare, hospitality, retail, manufacturing, real estate or technology—can face catastrophic losses.

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In addition, it's not only the monetary loss that you may face in a catastrophic claim situation, but it is also your brand and reputation that is at stake. Can your company survive widespread adverse publicity?

Kirchgessner said CNA's claims experts have seen many instances of insureds not reacting to or recognizing the potential catastrophic outcome of a situation when it occurs.

"Many insureds have not experienced a catastrophic liability claim and simply do not expect a claim to get to the point of being a crisis—a catastrophe to the business—or they think they can handle it once it happens," Kirchgessner said. "But once it happens, it could be too late to get out in front of a situation."

A challenge facing business today is the widespread adverse publicity associated with an accident which can spiral out of control fast—almost immediately in some cases—due to social media and the 24-hour news cycle.

"The speed of information sharing has changed a lot about how claims can develop because social media, blogs and the news are reporting so quickly," said Kirchgessner. "What used to be a local accident is shared with a greater audience, and sometimes all the details aren't available yet."

The residual harm suffered by a business once a matter reaches a widespread audience today is quite real. Where historically an event could be isolated to a small town, the news distribution channels today are widespread. The reputational damage may be done. This is why it is so important to get ahead of the story and get ahead of the adverse publicity. "Today we are playing in a very different environment and it is one that can result in a negative impact to businesses of all sizes, in any industry," Kirchgessner said.

Claims are also affected by general increases in loss costs, particularly in bodily injury cases. Healthcare costs have skyrocketed, litigation expenses are trending up, and jury verdict awards seem to increase every year.

"The plaintiffs' bar is always sharing ideas and strategies as it relates to medical science and theories of liability," said Kirchgessner. For example, 15 years ago people did not really pay attention to what we call today a "traumatic brain injury." Historically this was referred to as a simple "concussion". In sports, it would be the athlete had their "bell rung". Now traumatic brain injury is front and center in the eye of the public and the plaintiff bar is utilizing this information to its advantage.

In addition to large losses and adverse publicity, settlement and verdict inflation is real. Juries look at the socio economic landscape today in America, athletes and celebrities are signing record contracts every day, technology companies create billionaires. This all can skew what a jury believes a injured claimant deserves.

It is possible to prepare for and address the unexpected with Umbrella & Excess insurance coverage, which can include services to mitigate losses.

"When bad things happen, insureds naturally focus on bottom-line financial impact. But businesses need to have tools that help them to do the right things to develop goodwill without admitting liability and adversely impacting the situation," Kirchgessner said. "There is a way to get peace of mind and get help doing what you feel is the right thing to do. It is possible to get the best outcome for all sides."

Response is critical. CNA dedicated claims professionals partner with crisis management and legal firms to support insureds immediately and execute a plan of action.

"Messaging and managing is vital, and many

insureds don't have the level of expertise to handle it," said Kirchgessner. "It can make all the difference. Also, a little goodwill—something most insureds want to do but don't know how to do it properly—is always valuable."

Very simple actions, such as paying for a hotel room for an injured employee's spouse or offering psychiatric counseling to families or employees following an accident, can have a dramatic impact on the lifecycle of a claim. At the same time, social messaging to control the public's reaction while preserving the company's name is integral to minimize business disruption.

"Developing and delivering the right kind of prompt, empathetic response can keep a claim from reaching catastrophic levels," Kirchgessner said. "These types of losses are once-in-a-lifetime events and there are critical moments in the early stages of the response to these claims that an experienced crisis management team can influence to impact positively the ultimate outcome."

It may not be a question of if your business is struck by a potentially catastrophic liability claim, but whether you have the peace of mind in knowing you have the right level and kind of insurance coverage, and a team of professionals to ensure you maintain your business' continuity.

– CRISIS COVERED –

While a company facing a claim works hard to determine what, where, when and how an incident occurred – the coverage available under an umbrella policy can assist that company in mitigating reputational damage to the company and avoiding financial ruin.



What Happened

Due to poor weather, a commercial driver who has made a full stop at a traffic light is rear-ended and strikes a pedestrian crossing the street. A pile up of cars behind him also results.

What Umbrella Does

The employer of the commercial driver is a manufacturing company who has in place a commercial umbrella and excess policy which includes Crisis Management Expense Coverage. Leaving the manufacturer feeling secure that it would have protection in the event of a catastrophic liability situation.



Several people are injured, including the pedestrian, and the local news is quick to the scene.

The manufacturer is made aware of the accident by their employed driver. At this point in time, it is too soon to determine who is at fault, regardless of liability, the manufacturer is concerned for the well-being of their employee, as well as those injured at the scene.



In addition to interviewing the victims, the camera crew also captures several shots clearly showing the manufacturer's logo on the side of the truck and referencing the manufacturer by name in their report.

Upon being made aware of the news report and in anticipation of significant adverse media coverage, the manufacturer notifies their insurer and triggers their Crisis Management Expense Coverage.



News outlets bring the story into the homes of many, sensationalizing the accident with unsubstantiated reports. This story has the potential of negatively influencing the audience's opinion of the manufacturer's brand and ultimately how they view the manufacturer.

With the assistance of the insurer, the manufacturer retains the services of a crisis management firm to implement a prompt communication strategy to counteract the impact of the media coverage.

The insurer reimburses the manufacturer for their covered expenses associated with the crisis management firm as well as any other covered expense arising out of this incident, such as counseling for the manufacturer's driver.



Several people take to social media, stating they are unsure if they would be able to trust the manufacturer after seeing this accident.

The manufacturer, with the assistance of the crisis management firm, is able to control the narrative to the public.



The deployed messaging keeps the story from damaging the manufacturer's reputation further, allowing the manufacturer to focus on their business of producing and delivering quality products to the consumer.