

By Laura Tesoriero

Literally the last line of defense against cataclysmic liability loss, umbrella excess casualty insurance plays a pivotal role in the fiscal health and well being of a company. As liabilities become increasingly unpredictable and complicated on a global scale, the design and implementation of global excess casualty programs are correspondingly daunting and complex. With all that is at stake, it is critical to dedicate appropriate time, analysis, and expertise to continually assure the reliability and efficiency of your umbrella.

The basic tenet of risk management – to *finance* predictable losses and *insure* against the catastrophe – places umbrella excess liability insurance among the more crucial matters of risk transfer. Intended to provide a continuum of coverage above any number of “underlying” primary liability policies, the design and placement of an umbrella program requires excess brokers proficient in all of the underlying coverage contracts, as well as the excess policies. In creating an umbrella excess program one has to dovetail the insurance capacity and the varied policy forms of multiple excess insurers into a cohesive program that is cost effective and reliably responsive.

Effectively structuring a global excess liability program for a multi-faceted risk is like solving a jumbled Rubik’s Cube: it’s not easy and it takes time. Many different solutions need to be systematically tested to properly align policy language, coverage scope, quality, administration, continuity, consistency, and worldwide regulatory compliance – all at an economical price.

A Three-stage Process

An intricate task dealing with many variables unique to each individual insured, the development of umbrella excess protection generally involves three crucial stages:

- **Exposure Analysis**
- **Coverage Alignment**
- **Program Continuity**

Exposure Analysis

Every firm presents its own risk profile. Identifying the elements of that profile and analyzing them is fundamental to defining the make-up of an effective umbrella. Different exposures are inherent to each firm’s industry, products, services, geographic reach, regulatory environment, governance, and strategic plans. These and myriad other issues commonly need to be examined in designing an umbrella excess program. These can include:

- *Foreign Legal and Regulatory Compliance*: As a significant (and growing) percentage of corporations broaden into markets outside of the U.S., the

specific manner in which foreign regulations add risk to one's operations needs to be accounted for in the design and implementation of a global umbrella excess program.

- *Admitted versus Non-Admitted Insurance*: In countries where non-admitted insurance is prohibited, local placements, master difference in conditions coverage and the umbrella excess need to be skillfully assembled to eliminate exposure gaps among the policy limits, terms and conditions. This review is especially important for companies that have a decentralized insurance purchasing philosophy.
- *Newly Acquired Entities*: Mergers and Acquisitions and Geographic Expansion were recently ranked by financial executives as among the greatest challenges in creating viable risk management programs (52% and 42% respectively – poll taken by *Business Insurance*). Careful examination of coverage contracts to find and resolve unfavorable reporting requirements and/or size thresholds is critical to accommodate a firm's acquisition plans and strategies.

Coverage Alignment

Because the distinction between coverage intent and actual coverage grants can be unfortunately significant, focusing on program performance is essential in structuring a sound excess program. Understanding the inter-play throughout the primary and excess layers requires painstaking examination of details including, among many others:

- *Follow Form*: Pure "follow-form" is a rare, if not mythical, relationship even among quota-share layers. Umbrella policies do not always provide "follow-form" coverage of the underlying policies and even when they do, they typically "follow-form" of the controlling umbrella. All discreet terms need to be carefully examined.
- *Allocated Loss Adjustment Expense (ALAE)*: A fundamental issue in primary liability policies is the treatment of defense, i.e., particularly who is responsible for the cost and, as important, how these expenditures impact the primary limit of insurance. While many assume that umbrella excess policies will simply "follow form" of the treatment in the primary, all too often this can be an expensively erroneous assumption.
- *Schedule of Underlying Insurances*: Inaccuracies and missing information in the schedule of underlying insurances happen more often than one might expect and have the potential to create considerable holes in coverage that are irreconcilable after a loss.

Program Continuity

Achieving continuity in policy triggers, aggregate recognition and reporting requirements can avert the potential for very costly coverage gaps.

- *Policy Trigger Recognition*: Understanding and confirming how policy triggers coincide is fundamental to making sure a program responds appropriately to a loss. This is especially important when occurrence, claims-made and occurrence-reported policies are involved in the primary and umbrella covers.
- *Limit Continuity*: Program design errors in this area can be of extreme consequence at the time of loss. Inconsistencies in how excess policies base and aggregate their limits, and in how they describe the limits of the policies over which they attach, are not uncommon. The differences among various terms can be dangerous.
- *Duties in the Event of an Occurrence, Claim or Suit*: An insured's claims notification process, corporate structure and other claim-reporting procedures needs to be examined to assure that one's global internal protocols are aligned with the provisions in the current policies. At issue here is underwriters' reservation of rights and possible denial of coverage.

While never a one-size-fits-all task, structuring an umbrella excess insurance program requires a systematic process and detailed checklists to assure performance and avoid ugly surprises. The consequences of anything less than complete thoroughness can be disastrous; keep in mind – when it rains you can get very wet under a leaky umbrella.

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About Integro

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