

**Pro-Text
by Dan Reith**

How Much Is Enough?

Whenever we're dealing with commercial clients, a question we regularly hear is "How much liability insurance is enough?"

Without much thought to the matter our standard response is "as much as you can afford!"

That response is not a matter of being flip, or taking advantage, as much as it is a matter of fact and a reality of our ever-changing society. Like it or not, the Canadian landscape is becoming a lot more litigious.

We often hear three schools of thought: those that argue that it is the impact of American media which has caused otherwise good Canadians to seek ever higher limits from the courts; those on another side of the debate who argue Canadians have become, in general, a society which no longer values or believes in personal responsibility and simply seeks to blame everyone else for our personal ills; and there are those down the middle who believe that one should pay for acts for which they are negligent but nothing more. Ours is not to debate which school of thought is right or wrong but we can't resist this opportunity to suggest that, to a certain extent it, it seems that a combination of all three viewpoints which is closest to right. Regardless, as an insurance professional, the overriding issue for me and everyone I work with remains the question "How much liability insurance is enough?"

While we cannot possibly cover, in the confines of this column, all the issues taken into account when determining how much liability insurance is enough for your individual situation we can comfortably state that the answer really is: as much as one can afford. Liability insurance is there to protect your interests when your business, employee or product causes bodily harm or property damage to an unrelated third party as a result of negligence. Quite simply, one cannot foresee when and what potential liability loss may befall you and or your business. One cannot foresee with certainty what the total damage may be when all is said and done. If you are in the business of manufacturing a product and that product is shipped to another country then you are exposed to the penalties that may be imposed by that countries' judiciary for such losses. Given that your policy only pays out in Canadian dollars there may well be exchange rates to consider. Further, a recent decision by the Supreme Court of Canada has expanded the enforceability of foreign judgments to include those that are non-monetary. This is the latest of several verdicts in which courts in Canada have enforced default judgments. Canadian courts have traditionally been unwilling to overturn a valid foreign judgment even if the nature of the allegations would not have attracted any liability if the case had been heard in Canada. It is important that actions initiated in other jurisdictions are attended to and vigorously defended, even if the defendant is not domiciled or has no assets in that jurisdiction. If a defense is ignored or neglected, the plaintiff may secure a default judgment, and then bring it to Canada for a Canadian court to seek local enforcement. As such, your business liability insurance need be written to cover your operations or products sales abroad.

If you are an importer of a product then, depending where that product originates, your business may be considered, by Canadian law and insurers, to be the primary source and therefore it is your commercial general liability policy that responds in the event of any claim. Then there is the matter of the tail of a liability claim. By that we mean how far back a claim may stem. Given that most commercial general liability policies are written on an occurrence basis, an event which may give rise to a claim may have happened several years ago but you are not notified until today. It is the policy in force at that time that responds to the claim, not the policy in force today. The issue here is that any court award is then made at today's levels and they could well exceed the limits of a policy from, say, 10 years ago. Combine this with the fact that courts are taking an ever harder view toward businesses and a generally more lenient view toward plaintiffs and one can quickly understand why a basic liability limit of \$1,000,000 may well not be enough.

When you sit with your insurance provider to review your program, liability is the last place to consider cuts to save on premium. If anything, you need to consider the costs of increased limits of primary insurance and investigate the relevance of adding an umbrella or excess liability coverage. Keep in mind that excess and umbrella liability is not for every situation and such cover has its purposes. Your insurance professional is best equipped to advise you on that issue.

Next time you are looking to save on your insurance program remember to buy as much liability insurance as you can afford because later may be too late.

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