

**Pro-Text  
by Dan Reith**

**Liability: How much is enough?**

“How much liability insurance is enough?” This is a question we are often asked by clients. Without much thought to the matter, a standard response is “as much as you can afford.”

It 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. Whether we like it or not, the Canadian landscape is becoming ever more litigious. From where we sit, 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 the other side of the debate who argue Canadians have become, in general, a society which no longer values or believes in personal responsibility and seeks to blame everyone else for their personal ills;
- 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, and frankly to a certain extent it would seem that it is a combination of all three which is closest to right. Regardless, as an insurance professional, the overriding issue is 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 or alleged negligence. Quite simply, one cannot foresee when and what potential liability loss may befall your business or you personally for that matter.

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 country's judiciary for damage incurred by others as the result of your defective product. Given that your policy only pays in Canadian dollars, there may 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 nor has any 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. 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 products liability claim.

There is also the matter of the tail of a liability claim, which means how far back a claim may stem. Although an event may have happened years ago, it is the policy in force at the time of the alleged act or incident 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 which could exceed the limits of a policy from the past. Combine this with the fact that courts are taking a harder view toward businesses and a more lenient view toward plaintiffs and one can quickly understand why a basic liability limit of \$1,000,000 may 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. Now, keep in mind, 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.

Further, the insurance industry has recently introduced revised wordings for liability. These wordings, while generally the same as before, are intended to clarify losses intended to be covered. Over time, courts have introduced interpretations to policy wordings that were never intended but have resulted in insurers paying for claims regardless. To add more muck to the puddle, not all insurers have elected to adopt the new standard wording. This can have profound and potentially devastating impacts on business owners who may select the cheaper policy and come to find at the end of the day that one does not provide the liability cover they require. Take the time to review the policy wording and quiz your insurance provider as to what form they are recommending and why it is best for you.

Next time you are looking to skimp on your insurance program, remember to buy as much liability insurance as you can afford and make certain that your provider takes the time to demonstrate that the liability wording meets your needs. After all, once the lawsuit is brought against you, it is too late.

*This column appears regularly in Business Beat and has been submitted by Dan Reith BA (Hons) CAIB, a principal of Reith and Associates Insurance and Financial Services, 462 Talbot Street, St. Thomas. Dan is also a Member of the Chamber's Board of Directors. Questions and comments on this column are welcomed by the writer and 519-631-3862 or via e-mail: [info@reithandassociates.com](mailto:info@reithandassociates.com).*