



Current Articles 2009 – June

Are the Liability Limits Enough

Many times a broker will be asked by a client if the limit for the Liability Coverage is enough. It may be in reference to an Auto Policy, Personal Liability, Commercial Liability and in fact the question could apply to any class of liability coverages. A broker should be careful to not recommend a limit. Once the broker “sets” the limit and it is determined after a claim to be inadequate, the broker could be held responsible. A broker should only recommend various limits and the information should be quite clear that it is a quotation only and is not a statement as to the adequacy of the quoted limits. And of course this should be in writing and well documented. A broker friend of mine, when asked if the liability limits were enough used to reply with a profound statement: “How high is up”!

This article was prompted by a case where the automobile limit of \$1,000,000 was not adequate. The broker had effected the auto policy 7 years prior to the loss and with the limit of \$1,000,000. There had been no recommendations or discussion with the client or with renewal documents regarding higher limits. To make matters worse the insurer with whom the coverage was with, had published a circular to their brokers during the 7 years with several questions and answers from the insurer’s perspective. One of the questions was: “Is \$1 million enough liability coverage?” to which the reply was:

“the short answer is no.” This company memo was presented to the court by **the plaintiff’s lawyer!** What can the defendant say?

A recent case -*Marcoccia v. Ford Credit Canada Ltd.* the court and the Court of Appeal have upheld \$13.9 million future care costs in an auto brain injury. This is believed to be the highest future care cost settlement recorded. And this was a part of the overall settlement of approximately \$17 million.

As court awards proceed higher the obvious prevention of an E & O is to recommend (in writing) that your clients consider higher limits. This applies to Auto, Personal, Commercial and all liability policies.

From a product liability perspective, Maple Leaf Foods reached a settlement of \$27 million+. Following a fall at a summer camp an injured 8 year old was awarded \$2 million. Following the fall of two year old from a fifth storey apartment window \$17 million was awarded for brain injuries. An ex-pilot was awarded \$3 million against his former employer for defamation. This case also was in the courts for over 7 years. What about the legal and court costs? And what limits do your clients have for Personal Injury? A women who was struck on the head by an automatic gate at a local home and garden store was awarded \$3.7 million for head injuries. When a third party vehicle crossed the centre line and hit an oncoming car head on the court awarded \$12 million for the father and for the two children who were both rendered quadriplegic. A defective bicycle cost the manufacturer 3.5 million. And defective concrete award by the Court of Appeal was settled for \$15 million. And the list goes on.

From a personal liability standpoint, consider Personal Umbrellas. They can obtain higher limits for all personal needs and usually less expensive that increasing each vehicle, locations, boats, etc. Personal Umbrellas are not widely sold. Is the reason because the premiums (and commissions) are low?

Not only for your personal clients but your manufacturing clients who may be exporting to the USA are faced with an approximate 30% exchange rate. Similarly as summer approaches and your clients are travelling to the United States their \$1,000,000 limit may only be worth an approximate \$700,000. south of the border. Is that enough and what have you done lately to recommend higher limits?

Have a pleasant and safe summer.

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