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Chapter 8: Umbrella insurance as a strategic shield against major liability and financial exposure

8.1. Introduction

Liability and financial exposure arise from three natural sources: first, living in a society where people and organizations freely associate in markets, engage in transactions with each other, and act on behalf of each other and a collective dominated by relatively few government bodies, private institutions, and public agencies; second, having vast sums of money and highly visible assets placed at risk; and finally, being exposed both individually and through various forms of representation, authority, identity, and sponsorship for actions - and inactions - that are deficient and neglectful in the eyes of the public and others. In effect, an increasing share of society's increasing wealth enhancement and income generating activities create heightened liability and financial exposure for individuals and organizations. The legal context for this shift is the gradual reduction in the limits of liability for harmful acts and omissions both through enforcement of statutes mandating clients' welfare and protection, as well as case law (Farooq & Noor, 2021; Farooq et al., 2022; Brook et al., 2023).

Liability and financial exposure give rise to three traditional questions. First, is there a reason for liability and financial exposure to exist? Regardless of the perceived morality of these imposed obligations, the answer is yes. Moral hazard arises from people and especially organizations being unwilling to devote resources to preventing both obvious and not-so-obvious damage - as opposed to expanding these resources on productive activities. To reduce this hazard, society imposes liability and financial exposure burdens that are added costs for the limited number of individuals and organizations who are responsible for damages and losses. These costs are eventually borne by all.

There is a significant liability exposure involved in those professional services, and negligence or fault finding in legal perceptions is pervasive. In seeking damages, disgruntled or aggrieved parties generally look to all those involved in any way with the experience, looking for one or more deep pockets from which to draw. The sheer cost of preparing a defense against a lawsuit can itself be staggering regardless of the actual amount of damages sought or whether the claim has merit. The solution to this problem can be found in a specific policy that pays for commercial lawsuits: umbrella insurance (Tao et al., 2022; Maritim et al., 2023; Wang, 2024).

Fig 8.1: Umbrella Insurance

8.1.1. Background and Significance

Through investments and income accumulation, business owners for many years build equity in homes, investment portfolios and employer-sponsored pension plans, which increasingly become targets of lawsuits. Yet, owning significant assets and successfully operating a business can be a double-edged sword. These are hazards that go along with possessing sizable assets, particularly in a litigious society where people can be held liable for monetary damages that would otherwise cut deeply into their personal net worth. Anyone who has commercialized an invention or patent, owned a business, or served as an officer or director of a business should be especially concerned about the potential for a lawsuit causing extensive financial exposure and be thinking seriously about protecting their assets. Even when people have not previously faced lawsuits over their actions and decisions, the times are changing, and the threat is real.

8.2. Understanding Umbrella Insurance

Umbrella insurance is a form of personal and commercial insurance that supplement existing policies by providing additional liability coverage over and above the limits of those policies. Umbrella insurance extends beyond the limits of the insured's general liability, auto, or watercraft insurance policies, and pays for damage to the third-party property that exceeds those limits. Umbrella insurance also covers certain personal injury claims including false arrest, wrongful eviction, defamation, or a claim for mental anguish by any person. Umbrella insurance can be a wise investment for people who find themselves in situations that could expose them to lawsuits for damages exceeding their current limits of liability. Umbrella insurance is a type of liability insurance that provides extra coverage when your home insurance, auto insurance, or other liability insurance reaches its limit. For example, if you're responsible for an auto accident that costs $1 million and your auto policy has a $500,000 limit, an umbrella insurance policy can cover the additional costs.

Umbrella policy insurance usually offers a lower cost per unit of coverage than many other types of personal insurance. It is used to cover catastrophic situations and is said to be, as its name implies, a covering umbrella which enables the bearer to "weather the storm." For serious problems such as lawsuits or accidents with injuries, it provides a reassuring peace of mind. With the increasing amounts of money being sought in lawsuits, this resource is becoming both more necessary and more popular. Since the amount of damage payments has skyrocketed over the last decade due to increased cost of lawsuits and settlement amounts, individuals are seeking more protection from umbrella policies. Hiring the best lawyers to defend against these lawsuits is expensive, as is settling lawsuits, providing the need for a safety net to catch these expenses. A general liability insurance policy, however, provides only limited protection, and is designed to cover only business expenses associated with such a disaster.

8.2.1. Definition and Purpose

Umbrella insurance functions as a secondary or additional coverage plan that provides you with a cushion of protection if your existing liabilities exceed their limitations. Your main policies have a liability limit, right? Commercial and home insurance policies provide reasonable protection against everyday mishaps, but they do not protect your personal assets for the most extraordinary liabilities. Umbrella insurance steps in when your other policies are exhausted. It also includes some liability exposures not covered by your core insurance policies, especially if they're caused by something wacky or erratic. Did your spoiled pet knock over a priceless sculpture? Did your son throw rocks at passing cars during a neighborhood game of war? Did the unusually heavy rainfall cause your newly paved driveway to buckle, damaging your neighbors' property?

Umbrella insurance transfers the financial costs of those bizarre liability events—among others—away from you and to the insurance company. Without it, you would be financially responsible for their maximum damage, sometimes devastatingly so. Umbrella insurance supports and reinforces the defenses that your other policies erect between your assets and the personal liability castle wall busters like auto and boat accidents, slip-and-fall injuries, hurtful outsourcing of opinions on social media, scapegoating accused perpetrators of cyber bullying, false arrest, landlord discrimination, and professional negligence. Responsibilities for such claims are normally shouldered by commercial general liability insurance and professional liability insurance. However, the resulting costs can exceed their aggregate limits and settle on you. Umbrella insurance catches the spillover.

8.2.2. Types of Umbrella Policies

Umbrella insurance coverage can provide any one or all of these types of insurance coverage. While some policies provide only excess over existing coverages, other policies can provide broad coverage above or excess of a self-insured retention. Umbrella insurance is particularly helpful when an insured is involved in a business that presents a potential for a large amount of liability; thus, it is generally recommended that anyone involved in a business that has a higher than average exposure should consider an umbrella policy.

Essentially there are three types of umbrella insurance policies that an individual or business can consider: wholesale excess or umbrella policies, follow form umbrella policies, and self-insured retention policies. A wholesale umbrella provides liability limits over and above the limits of the basic policy and doesn't take all of the exclusions in the primary policy. A follow form umbrella, in contrast, usually incorporates all of the status and exclusions of the underlying policy and merely provides higher limits.

Although a wholesale umbrella is generally viewed as providing broader coverage, in actuality, the specific terms of the policies including the particular exclusions will dictate the extent of coverage. There are advantages and disadvantages to both types of policies. A follow form is less expensive to buy since it contains a lesser amount of risk. However, there are other cost considerations besides premium charges. The more complex terms of a wholesale umbrella can make a claim for coverage more difficult to establish. Further, follow-form policies have been known to cause concern for some underwriters, who feel that the underwriting limitations and points of concern present in the underlying coverage will simply be magnified.

8.3. The Importance of Liability Coverage

Liability protection, a critical component of a personal risk management program, shields you from what could be financially detrimental claims due to negligence. Coverage against liability to others is provided by three types of insurance: homeowners, auto, and umbrella. Despite the lack of apparent evidence of negligence, your liability exposure is immense. Laws in all states permit a person to sue another for virtually any reason. Persons in various occupations, such as professionals, business owners, and contractors, are especially apt to be sued for negligence in the conduct of the employers' business. Also, employers can be held liable for their employees' negligent conduct during working hours. The likelihood of liability for negligent conduct of an emotional

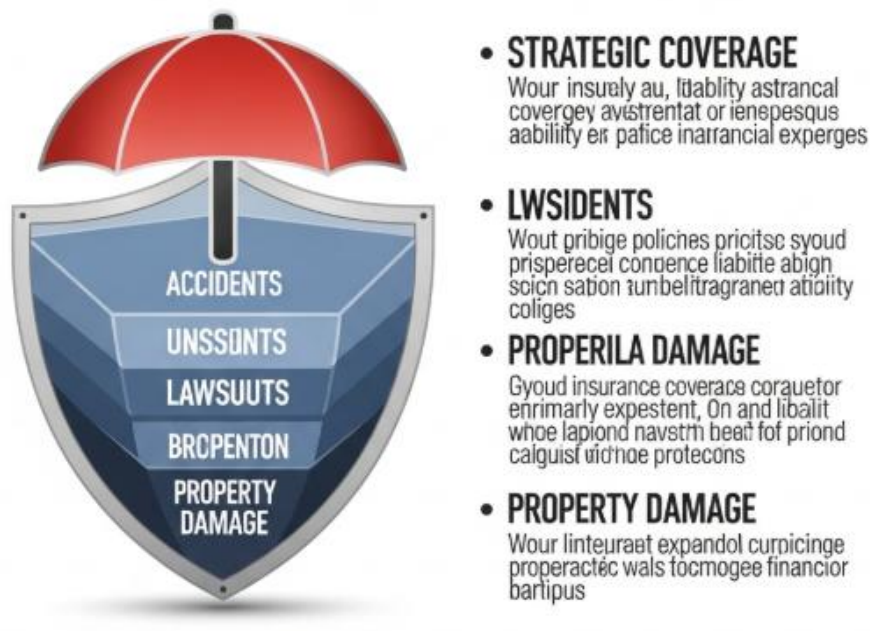

Fig 8.2: Liability Coverage of Umbrella Insurance

nature, such as defamation, has increased greatly in recent years.

Unfortunately, the effect on the homeowners' market of this expansion of negligent conduct liability has been to create a dislocation between the price of the liability coverage and the risk assumed by insurers and a serious erosion of the personal umbrella insurance market. Quite predictably, high losses caused by a number of unprecedented jury verdicts and the resultant public outcry have led to unwillingness by some insurers to provide coverage for various types of liability. They have withdrawn from certain types of casualty business or restructured their business to include only those types of business with higher profit margins. Their response has been to quietly discontinue coverage, raise premium prices, limit or exclude coverages, and place caps on amounts paid. Such actions are the usual reaction of the property and casualty market to poor results from underwriting losses, and they are indicative of a withdrawal of the capital markets from an obviously unprofitable line of business rather than a lasting change in the desire of consumers for such products.

8.3.1. Common Liability Risks

Most people know that they can be sued if they injure someone or damage someone else's property. Umbrella insurance is designed to protect against this liability. Liability is defined as the state of being legally responsible for something, especially for cost or damage. Liability risks include injuries to yourself or others, or damage to others' property. Unfortunately, accidents can happen. Aside from accidents, other incidents may also result in liability issues because people believe that you caused them harm, or were responsible for damage done to their property. Fortunately, liability insurance provides some measure of help, but it may have limits that are lower than adequate, or it is not available for more unique situations. That is where umbrella insurance comes in.

There are a few specific instances perceived as relatively common liability risks. Injuries or Damage to Others may be the most widely imagined instances. For instance, if you are in a vehicle accident and you injure another person, you are liable for that person's medical expenses. If that person misses work, you are liable for that person's lost wages. If that person cannot help take care of family obligations, you may be liable for the cost of hiring help for that. If the accident causes long-term injuries, the costs could include long-term rehabilitation expenses and permanent loss of income, as well as possible compensation for pain and suffering. If the accident is severe enough, the liability could be of a size that is difficult or impossible to face.

8.3.2. Case Studies Illustrating Liability Exposure

To help you understand the potential for loss and the need for adequate coverage, addressed below are two examples of situations where the costs of a claim after an accident substantially exceeded the company's liability coverage, creating drainage on the company's net worth. These examples are real, but names may have been purposely changed. You may notice that a few years have elapsed from the time of the incident to the time of the trial. This emphasizes and stresses the need for high liability coverage limits in order to have sufficient protection against future expenses that could give rise due to claims after incidents.

Mr. Smith spent money to defend a lawsuit for several years, plus money to settle the case, then finally opened his financial records to contribute to a large judgment. An employee working on a roof at a commercial building fell through a skylight and was left permanently paralyzed. He sued both the building owner and the contractor for lost wages and pain and suffering. The jury awarded over $16 million to the plaintiff, apportioning $4 million to the building owner and $12 million to the contractor. The contractor had large general liability insurance limits for bodily injuries, but unfortunately had allowed them to expire about six months before the accident; the contractor's assets were completely inadequate to pay the $12 million judgment.

8.4. Financial Implications of Liability Claims

Liability claims can have a significant financial impact—not only from legal costs but also from any settlement or payout as a result of litigation. While you may have successfully avoided paying for a claim because your insurers engaged in a vigorous defense or the claim was ultimately found without merit, the cost of fighting such claims—both financial and psychological—can be significant. In such cases, you may be liable to your accuser for reimbursement of their legal expenses.

The costs of lawsuits can be staggering. The average cost for legal representation in court exceeds a substantial amount on a small matter and for larger claims exceeds hundreds of thousands of dollars. Jury verdicts of well over a significant amount are easy to find, especially for liability claims involving allegations of negligence. Insurers require you to pay any deductible—generally a percentage of the damages or policy limits—for settlements, court judgments, or any legal fees under your policy before they will step in and assist. Specialty policies for directors and officers, errors and omissions, and general liability claims often contain exceptionally high deductibles.

Any lawsuit (let alone a judgment) against you, your family, or your business can have a serious adverse impact upon your personal and business finances. In the case of individuals, lawsuits burden income with costs (monetary and time) for both yourself and your employer. If your business must fund insurance premiums to purchase coverage, and in the instance of a lawsuit, cover deductibles that can reach many hundreds of thousands of dollars, it takes away from funds needed to operate and grow the business. In many cases, once a lawsuit is filed, the insurance companies may take over the defense of that action.

8.4.1. Cost Analysis of Legal Fees

In almost any larger or smaller liability claim, please remember that legal fees will take a big portion of the amount recoverable. This has been recognized by various states; thus these states offer various alternatives to the common tort system in order to replace the tort system with a no-fault system and to reduce or better regulate the amount of legal fees which was requested in tort systems. The simplest way to explain such a cost analysis is by taking a personal injury claim of $100,000 as an example. In such a case, a 30% contingency fee might be paid, usually reduced if an appeal is taken or if you lose. But the entire situation gets worse if one party incurs $200,000 in legal expenses – no recovery for that party – and the other party incurs expenses of $75,000 but wins with a $100,000 judgment. The person who is liable on the judgment recovered only $25,000. The successful plaintiff has legal fees of $7,500; the defendant has incurred $75,000 in unnecessary fees because of that party's excessive insistence on his or her right to legislation. What is the solution? The only way to handle that situation effectively is through some modification of the present tort system.

Remember too that, if it is an automobile accident with injuries, the injured party could negotiate with the injured party's own insurer to pay the injured party's damages regardless of who is at fault. The insurer, of course, will look to the at-fault driver's liability insurance for reimbursement after paying the first party's claim. In this circumstance, it should be inexpensive for the parties to have an agreement rather than incurring extended attorney fees for each party. There could be a joint filing without litigation. The only problem is generally obtaining that agreement from the at-fault party because, if the accident had caused only property damage, there could be no reimbursement by the at-fault party's insurance and the cost of adjustment would usually be only minimal.

8.4.2. Impact on Personal and Business Finances

Liability insurance protects you from losses associated with an injury claim made against you. A liability claim or lawsuit could bog your finances for an unlimited time period, creating economic stress on your family. A million-dollar claim, won or lost, could cost you your entire net worth. It could also affect your ability to support your family, forcing them to rely on public assistance. If you are successfully sued, you may be required to make payments for many years. These payments could include compensation to pay for the injury, punitive damages, and court and lawyer fees, as well as any medical or hospital expenses incurred to treat the injury. The same conditions apply to a business that is charged with a liability claim. A lawsuit could wipe out its entire net worth, thus forcing the owner to declare bankruptcy and lose his or her business. A court may award damages in a personal injury lawsuit that far surpass the insurance protection your business carries. A suit may also cost you valuable unforeseen business expenses, paid with your own money, to help settle the case. Risk avoidance is a strategy intended to eliminate possible liabilities. For example, if you own a dog with a history of biting, you may want to avoid the risk of liability for dog bites by getting rid of it or not allowing it contact with other people.

8.5. How Umbrella Insurance Works

Umbrella insurance serves as a safety net that goes beyond the limits of standard liability policies. Your home, car, and business policy have limits to how much coverage they give. An umbrella policy can extend additional coverage—opening up a much larger pool of assets as a safety net. The limit of an umbrella insurance policy varies, but policies typically cover at least $1 million in additional protection.

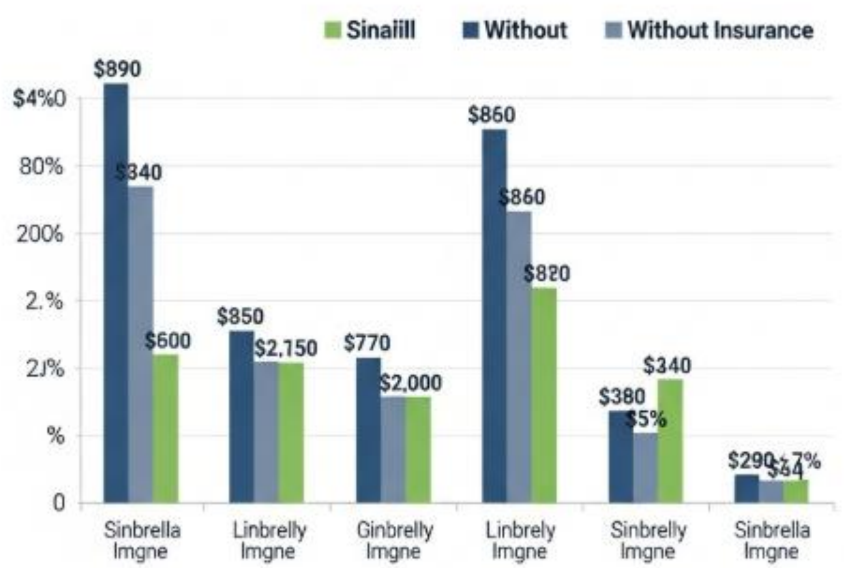

Fig : Umbrella Insurance as a Strategic Shield Against Major Liability and Financial Exposure

If you're a high-net-worth individual, you may want to invoke even greater levels of protection. The umbrella policy provides an extra layer of protection on top of existing policies. When an existing policy can no longer cover a claim, the umbrella policy kicks in. In other words, it extends the liability limitation of coverage types such as personal liability insurance for injuries and damage to others and the collision and property damage of automobile insurance for injury and damage caused to others in a motoring accident. Umbrella insurance is also designed to cover certain events that might not necessarily be covered by other primary insurance policies. Another way of looking at umbrella insurance is that it’s excess insurance that kicks in when the limits of an associated underlying policy have been exceeded. The policies associated with umbrella insurance that require underlying coverage typically include homeowners and auto insurance. Commercial general liability insurance, professional liability insurance, employers’ liability insurance, and business auto insurance are the types of commercial insurance coverage that are often covered under an umbrella policy. Umbrella policies can also provide coverage to defend against lawsuits and certain other legal expenses. Coverage for incidents such as personal liability in relation to false arrests, property damage, and slander lawsuits as well as injuries caused by non-family members to children in your custody are usually included in an umbrella policy.

8.5.1. Coverage Limits and Exclusions

Umbrella insurance policies contain coverage limits and exclusions and usually have higher deductible and lower premium relative to the primary insurance policies. Umbrella liability coverage limits usually go beyond the primary insurance limits. They may extend coverage for situations excluded by the underlying primary insurance coverage, such as personal injury coverage for slander, libel, or false arrest, discrimination or wrongful eviction. Umbrella insurance policies typically exclude coverage for commercial general liability coverage, except for exposure from non-commercial buildings being rented without employees working at the premises. They also exclude from coverage for the liability of the vehicles used in business that are not covered under the commercial automobile policy, but only at the designated premises where the vehicles are parked or used while being repaired or serviced. It may also provide limited coverage for rental vehicles due to the unavailability of primary coverage.

While umbrella insurance policies provide broader coverage, they also contain exclusions related to business activity, the liability of any business entity associated with an insured, or for an insured who is a director or officer of a corporation, professional corporation or limited liability corporation. They also exclude liability for war, for liable arising from sexual harassment, and for the liabilities of an insured for intimidation, interference with contract, or infliction of emotional distress. They also exclude liability assumed under contract other than a written rental agreement for less than a year or a contract that is a contract of surety for public or private construction. These exclusions that might narrow coverage should be carefully reviewed during the underwriting stage with the insurance agent prior to binding coverage.

8.5.2. Claim Process Overview

Umbrella insurance claims are filed the same way as other insurance claims. For instance, if you have auto or home insurance and are in a car accident that exceeds your liability limits, your umbrella policy should cover the difference. The same process applies if you are sued. Even if the umbrella policy pays for the bulk of the claim, you are still responsible for covering the limits of your primary policy.

Let's say you are liable for an auto accident that resulted in $1 million in medical expenses, and you have auto liability coverage with a $500,000 limit. Your auto policy covers the first $500,000, and your umbrella policy pays for the remaining $500,000. The umbrella claim would be for the same amount of the claim, but filed under a separate policy.

Filing an umbrella policy claim is the same as filing any other claim. After contacting the insurance company, you would need to provide the policy number and details of the incident you are filing for. You'll also need to provide copies of your primary policy declaration pages that show your primary liability limits. After the claim is opened, the claims adjuster for the umbrella policy will work with the primary insurance company to resolve the claim.

Reviewing the umbrella policy to find out what is covered and what is not, as well as what is required to file a claim, can make the claims process much smoother. However, the primary insurance policy will pay first, and then the umbrella insurance company will reimburse what they owe. The primary insurer retains the sole duty to defend the insured against the lawsuit or loss.

8.6. Evaluating the Need for Umbrella Insurance

Umbrella insurance can serve as a quasi-cash reserve which protects the policyholder from overspending and a conduit to transfer risk of extreme hostile activity by others back to other areas of society. Because of this unique risk management function, in addition to the benefits of a relatively inexpensive source of added financial protection, the question becomes: Who should own this special type of policy? Furthermore, if so, what limits of umbrella insurance would serve to best accomplish that purpose? The first step in determining the need for umbrella insurance is to undertake a careful assessment of underlying personal risk factors, e.g. risk inherent in various physical assets, excess cash or unrealistic expectations, hostile third parties, unknown or absent participants in the risky activity, the role of insurance in society to allocate risk of loss, and the appropriateness of cash reserves to mitigate loss but offer no protection against liability or defending against claims.

Once the need for additional protection beyond primary coverage is established, the size of the umbrella policy must be determined. Typically, umbrella limits are set at a level that would get the insured through a general policy limit of primary coverage on the risk. That amount would probably be around $2 million at the currently prevailing rate of acceptance of risk. Generally, such a minimum level of insurance would cover all of the potential risks of liability that an individual would incur from personal activity over his lifetime of exploring the edges of his perceived risky behavior in allocating resources to leisure time consumption. If disabled or dead as a result of others, this could cost the individual or his family far more than $2 million. Umbrella insurance may need to be raised to higher limits if special factors apply.

8.6.1. Assessing Personal Risk Factors

At the heart of the need for personal umbrella insurance are the major life events we face: marriage, the purchase of a new home or real estate investment, the arrival of children in the family, changes in employment, the adoption of a pet, increased net worth, and retirement. For each of these major events, or the combination of several of them, the potential financial disaster of a major liability judgment is escalated. Umbrella insurance is the backstop of the liability insurance we all carry, through the risk portal of asset-based insurance, auto and home coverage, business liability coverage, or the liability portions of other specialized policies. Once our primary liability insurance is exhausted by a judgment or settlement, umbrella coverage provides additional limits to lessen the economic hardship that follows a significant loss. The amount of protection offered by umbrella insurance is something to consider in balancing the adequacy of coverage against the cost of premiums.

A few million dollars in umbrella coverage might seem like a fortune for Joe Homeowner, but losses can easily exceed that amount. There is a widely held misconception that jury awards are limited to the value of an insured defendant's coverage limits. The reality is that juries are not told of insurance limits and a jury award that exceeds the insured amount will mean financial ruin for the defendant if their out-of-pocket personal assets do not cover the difference. Despite the potential for having assets beyond the judgment amount, insurers will grant umbrella policies only at certain levels of coverage and subject to what they feel are appropriate exposures that go to the basic question of risk.

8.6.2. Business Considerations for Coverage

Determining what commercial umbrella coverage to carry resembles the considerations that factored into a personal umbrella decision. The operational hazards of a business establish the company's primary exposure and the amount of liability coverage required to protect it. Depending on the business operation, a corporation may need to supplement the primary liability coverages with significant limit excess liability coverage on several lines, including CGL, auto, and employer's liability. Other liability policies also typically offer the option of higher limits, such as medical malpractice, property damage, and errors and omissions. Increasing the limits on these coverages attracts higher pricing than commercial umbrella premiums.

Most likely, the business corporation or partnership desires the umbrella only to extend the limit of CGL coverage, specifically protecting what the corporation and its insuring need the additional coverage to protect—their numerous assets and operations prone to loss. A public entity may decide to carry an excess governmental warranty fund coverage, which would be either excess of a fixed limit or a stop-loss coverage. Other businesses, possibly the insured group in a health-related circumstance, may choose to obtain additional General Liability limits other than an umbrella with a many-public entity expatriate structure.

Reasonable considerations about a business umbrella apply to commercial coverage in general, even if not a requirement. The need for coverage is fewer instances where the business is a subsidiary to a parent corporation. Umbrella coverage is hardly ever ample to prevent bankruptcy for a sole proprietor risk, especially for an employer. For example, if every department in a large company has a $2 million surge in collateral inadequacy mandates, while the typical additional prime facet of corporation operations is sufficient, a high umbrella limit is of little additional value to a government guarantee entity.

8.7. Conclusion

Umbrella insurance policies are becoming significant components of personal risk management portfolios. As affluent families create or acquire more complex assets and participate in businesses, the likelihood of facing insurable losses or becoming defendants in large liability actions increases. The impact of this trend is amplified by a unique combination of factors, some of which increase the likelihood that high income individuals will incur unusually high liability losses: a general decrease in the deterrent effect of premia and policy limits on the severity of liability judgments; an increased willingness on the part of third parties to assert claims; a culture of quick-fix solutions; increasing instances of jury awards involving allegations of extreme conduct; the increasing likelihood that large corporations will attempt to shift losses to the family members of franchisees or dealers; increasing litigation against professionals; and an increase in emerging business risks.

Umbrella insurance products allow individuals to purchase additional protection against major liability losses at a relatively low cost. While the insurers' exposure under umbrella products is broad, the high policy limits shave coverage over the insured's primary assets. Loss of insurance protection for bodily injury and property damage liability should such an insured be engaged in business negates the original purpose for which the product was designed. Yet, despite the limit of liability restriction and the comparative availability of the coverage, business-related claims continue to arise and prompt denials of coverage. As a result of these issues, experts recommend that both individuals and their insurance agents closely review the coverage provided by any umbrella program on at least an annual basis.

8.7.1. Future Trends

Looking ahead, the market for umbrella insurance is poised for growth. The threat of lawsuits has never been greater, and ordinary liability policies are often not enough to stem the bleeding once a policyholder is called. Umbrella policy pricing, meanwhile, has grown much softer over the past several years and is perhaps 20-30 percent cheaper than in the past. Premiums have grown increasingly favorable vis-à-vis the underlying hull premiums, which have not declined nearly as much as umbrella policy premiums, as a result of the commensurate increases in underlying hull limits.

We think that several trends will drive up demand for umbrella insurance protecting individuals. First, umbrella policies are inexpensive, especially relative to the other things people insure. Second, people like making big bucks, and everyone knows that once a person does so, they will insulate themselves from harm. Thus, people want to sue the rich. Lawsuits against rich people are defensive, so why shouldn’t rich people demand the protection of umbrella insurance? Third, risk exposure is growing in several areas, such as automobile accidents and sexual abuse liability.

Umbrella policy demand by corporations can be expected to grow steadily. As corporations are embroiled in more sticky litigation, their need for liability insurance will increase – and umbrella policies may serve somewhat of a force multiplier role. Corporations also tend to have no premiums considered "too high" if the claims costs are believed to be substantial, so pricing will affect little the demand for umbrella policies by corporations.

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