THE UMBRELLA LIABILITY CRUNCH

New Restrictions and Higher Prices Mark These Policies

Unfortunately, the term “umbrella” as used in this form of liability insurance is somewhat misleading, if one thinks of the term as all-encompassing and providing the broadest of protection. If properly written, this policy form can protect your contracting firm from nearly all catastrophic losses; however, there are some losses which are not covered. An understanding of how this liability coverage complements your basic liability coverages is necessary.

Umbrella liability policies provide broad protection against catastrophic liability losses by adding additional liability limits beyond the limits of a contractor’s underlying premises and operations general liability policy. It provides, also, for broad coverage for areas where the underlying general liability coverage does not apply. A simplistic method of describing umbrella liability coverage is that of viewing the coverage “floating over” the underlying liability policy, providing extra liability limits to existing underlying liability limits, and providing liability protection where the underlying coverage does not apply.

In the current restricted and difficult liability insurance market, umbrella liability insurance has become more restrictive in its application than it was in prior times. Contractors need to be aware of the umbrella liability policy’s usual limitations and its more recent restricted application.

More Limitations Today . . .

Umbrella liability policies usually are referred to as a “following form”; that is, the umbrella coverage follows the coverage in amount and kind found in the underlying liability insurance. This means that should the underlying coverage provide broad protection, the umbrella ordinarily will follow by
providing broader coverage. As stated above, the restricted market conditions have generated endorsements to umbrella policies limiting their application. In those areas in which the underlying policy does not provide coverage, the umbrella will respond to such losses above a self-insured retention (deductible). The umbrella does not respond to all such losses not provided for by the underlying coverage, but only to certain losses not excluded specifically by the umbrella policy form. One of the “sticky” matters of concern is how legal defense costs are to be handled with respect to losses not covered by the basic policy, but covered only by the umbrella. Legal defense costs should not be in excess of the self-insured retention (deductible). Currently, some umbrella insurers are insisting that the insured contractor defend any lawsuit until his legal defense costs exceed the self-insured retention and then the umbrella assumes any additional legal defense costs. This provision of umbrella forms should be reviewed carefully to ascertain just what the insurer is providing in the way of legal defense coverage. Unfortunately, some forms contain ambiguous wording in this regard. The time to negotiate with the insurer on this provision is at the policy inception, not after a loss occurs.

Some umbrellas now insist that the contractor reinstate any exhausted limits of underlying liability coverages before the umbrella applies. In other words, the normal procedure had been that if the underlying liability coverage limits were exhausted through lawsuits and judgments, the umbrella would take over as it applied to any area normally not covered by the underlying policy. It applied, of course, subject to the self-insured retention (deductible). Today, there are some umbrellas requiring a reinstatement of the basic limits before the umbrella applies. This can be expensive and in some cases, impossible. An attempt should be made to remove or modify this provision.

Another area of concern is pollution coverage. The insurance business has been eliminating coverage for this exposure in most forms of liability insurance and therefore, a restriction of coverage for the pollution exposure is likely to be found in umbrella policies. In any event, one should not accept a restriction in the umbrella form that is greater than that found in the underlying coverage.

Another restriction to which contractors should be especially alert is industry limitation endorsements. Umbrella insurers have developed special coverage limitations for certain industries, and contracting has its share of these endorsements. Some umbrellas limit coverage for contractors in the same manner the coverage may be limited in the underlying coverage. Others have absolute limitations of coverage for contractors irrespective of what this basic coverage does or does not provide. Obviously, the fewer of these restrictions in the umbrella, the better.

Now, we are seeing very large increases in umbrella premiums. This trend will continue at least through 1986, and coverage will continue to be restricted. You should expect to pay 30% to 60% more for your umbrella than its previous renewal, and with some coverage restricted. There is little YOU can do about the price, but you should review the restrictions carefully and try to have them modified or removed.