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THE INSURANCE NEWSLETTER

Fall 2013

Rethinking Personal Insurance

Summer is over and most folks are back to their routines; it's a good time to take a look at an insurance topic we only occasionally touch on. Our Insurance Newsletter mostly focuses on commercial property and liability insurance subjects, in an effort to offer our clients useful information and insight into these necessary products. From time to time we make small forays into personal risk and insurance topics, but it's worth paying some attention to that subject here.

Readers of this Newsletter are typically owners, principals, CEO's, CFO's or other high ranking executives or owners of commercial or public enterprises. Such folks have typically enjoyed a certain amount of personal financial success, and while they might not necessarily think of themselves as wealthy, with some success in life most have accumulated substantial personal assets. Many also engage in a variety of leisure time pursuits, hobbies or pastimes that also create personal risk and exposures that fall outside the four corners of standard personal insurance policies.

As a result their personal insurance needs can often be as complex as those of many smaller businesses and corporations. There are a number of fairly common problems we frequently find in personal insurance programs. Here is a look at some common ones; see if any might apply to you:

1. No personal umbrella policy. Most of our readers likely carry more than just the minimum required limits of liability insurance, particularly on their auto policies, but without an umbrella you still don't have enough insurance protection.

We offered several real life examples in our Winter 2010 edition of the Newsletter of common occurrences faced by normal folks that led to outsized jury verdicts against them and ensuing catastrophic consequences to their personal finances. Multi-million dollar awards in personal lines liability suits are no longer uncommon. If you cause a serious accident and have assets, you can be sure the injured parties will come after you for compensation; personal umbrella policies are a cheap way to protect those assets. They should be written to cover over all underlying liability policies.

2. Inadequate uninsured/underinsured motorists limits. Recent insurance industry research showed that in the five states with the highest percentage of uninsured drivers, a quarter (that's right, 25%) of all drivers on the road were not insured. These aren't just smaller or less populous states; California was one of them. The five states with the fewest uninsured motorists still averaged six percent uninsured, one of every sixteen cars on the road.

Not insured means no insurance, but not included in these statistics are drivers who might only carry low or even just minimum mandatory limits of insurance as required by each state. Required per person limits range from a high of only $50,000 (in just two states), to as little as $10,000 (three states) or $15,000 (nine). Most are in the $20-25,000 range. These are pretty scary numbers. A Florida driver would count as properly insured with just a $10,000 bodily injury minimum limit even though that entire amount could be used up in the first hours of medical care after an accident.

Since you can't rely on other drivers to be properly insured, you need to protect yourself and your loved ones with high uninsured/underinsured motorists limits on your auto policy.

3. Homes and dwellings are often substantially underinsured. A common misconception in personal insurance is confusing market value with insurable replacement value. When your home burns down you want to replace it, and all you own inside it, right now. You'll be paying full retail for everything. You need to make sure you have enough insurance to do that.

4. Home policies also have lots of sublimits on special types of property. Cash, negotiable instruments and jewelry all have very small internal policy sublimits. Stamp, coin, gun or other collections are limited or completely uninsured. Art, paintings, fine arts? Not properly covered. Do you or your spouse operate a small business or profitable craft or hobby from your home? Uninsured. Own a separate vacation or other rental property? Problems there, too. These things all need separate, detailed attention.

5. Speaking of hobbies, do you own an antique or collectible auto or other vehicle? A motorcycle, RV, off road or other vehicle? Numerous articles have been written in the insurance trade press about insurance coverage issues caused by golf carts. How about boats or personal watercraft? Once you venture into maritime law and liability you are in another world entirely.

6. The second biggest cause of personal property loss over the past decade in the U.S. has been floods. It's hard to believe anyone does not know this by now, but its worth repeating that your homeowner or dwelling policy does not cover flood loss. The National Oceanic and Atmospheric Administration (NOAA) reports that almost half of the U.S. population lives in coastal counties; add in the population that lives in flood exposed inland areas and most people face at lease some risk of flood loss.

7. Last point: building codes and zoning laws have been changing as public officials have learned hard lessons from past natural catastrophes and become aware of potential issues from climate change. Unless you live in a brand new home, chances are good you would not be able to rebuild it exactly as it is without significant (and costly) upgrades. These are not covered by standard policies unless the policy has been specifically endorsed to do so. Most have not.

Given all this, and the simple fact that people's circumstance change over time and the last thing most folks think of is to notify their insurance agent, it's easy to see why it is not uncommon to often find poorly written personal insurance programs. The only thing that saves most people in general from being severely impacted by an inadequate personal insurance program is that 99% of the time.....Nothing Happens. And when Something Does Happen, it's, fortunately, usually not catastrophic.

Still, relying on Nothing Happening as a personal financial and risk management strategy does have drawbacks. If you have not spent some time and thought on updating your personal insurance program recently, think about doing that now, and give us a call.

Summer Insurance News Roundup

There were a number of insurance related developments in the news over the summer. Here's a summary of three of the most significant likely to affect many of our readers:

AMA: "Obesity" now a disease

Last June the American Medical Association (AMA) House of Delegates approved a resolution reclassifying obesity as "a disease state". "Obesity" is generally measured by Body Mass Index, calculated from an individual's height and weight. BMI categories include Underweight, defined as a BMI less than 18.5; Normal weight, a BMI of 18.5 to 24.9; Overweight, a BMI of 25 to 29.9; and Obese, a BMI of 30 or greater. In practical terms, by this measure a man six feet in height would be normal weight at between 136 and 184 pounds, overweight at up to 229 pounds and obese over that. An additional category would include extremely obese, at 295 pounds or more.

To understand the effect of this resolution, consider that the AMA has effectively declared that the one third of all Americans who fall into the obese category, based on BMI, suffer from a medical condition that requires treatment.

What does this mean to you? In workers' compensation obesity has historically been viewed as a co-morbidity factor, a condition that occurs at the same time, but usually independent of, any work related injury or illness. Now that obesity has been reclassified as a disease if a claimant is obese or if treatment for a compensable work injury causes significant weight gain doctors may feel a greater responsibility to provide treatment for obese patients for their weight...especially if there is now a greater likelihood that they will be paid for doing so.

Translated into dollars and cents, recent research by the California Workers' Compensation Institute (CWCI) looked at claims data from a sample of 1.2 million claims from accident years 2005 to 2010 to establish a baseline to measure the potential impact of this new determination. In these years medical providers might have included an obesity co-morbidity code on their medical bill if they determined the condition needed to be addressed so that the work injury could be treated to allow the patient to recover and return to work; one example of that would be if an obese injured worker needed to lose weight before undergoing back surgery. The CWCI research determined that paid losses on claims with obesity identified as a co-morbidity factor averaged $116,437, or 81.3 percent more than those without; and that these claims averaged nearly 35 weeks of lost time, or 80 percent more than the 19 week average for claims without obesity co-morbidity. For financial folks who are arithmetically inclined, if one up to third of your claimants cost 81% more, that would indicate a potential increase in total WC claim costs around 27%. That's likely a high estimate since obesity was already a factor in some claims, but there seems to be little doubt that the AMA decision has a significant potential to translate into higher WC claim costs, and thus higher premiums.

Flood Insurance Rates on the Rise

Floods remain a persistent concern, as is evident from news reports, and with unpredictable weather patterns that seem to have become an ever present fact of life that shows no signs of changing.

The Biggert-Waters Flood Insurance Reform Act was enacted in 2012, before storm Sandy hit the Eastern Seaboard. It reauthorized the National Flood Insurance Program (NFIP) for five years but, in view of the fact that cumulative losses in the NFIP had ballooned to some $24 billion, the act also included other changes to address structural problems in the program that led to the deficit. Most significantly, it requires that insurance premiums for property owners in flood prone areas be set at a level that better reflects the full actuarial risk of flooding in a specific area. The government is also updating and redrawing flood-zone maps that will classify more properties as flood risks.

Companies and individuals who own properties that lie in flood-prone areas have long enjoyed access to government subsidized flood insurance, but that's now changing. Owners of structures built before the release of the first federal flood maps and owners of grandfathered properties that either met flood guidelines when they were built, or have since been determined to be in a flood zone, are affected the most. The new law also eliminates an exemption that used to apply to buildings that were built to comply with previous building codes and flood zone elevations.

Owners of such properties, along with those that for the first time may now find themselves within the borders of newly expanded flood zones, may face uncomfortable choices. Federally subsidized flood insurance is going away. They must now either retrofit their homes or businesses by raising their buildings higher so they are above flood level and take other measures to better guard against flooding, or pay new flood insurance rates that could surge by more than $10,000, and higher, annually.

The most immediate and dramatic impact of this law is being felt initially in coastal areas, since that is where FEMA has gone first to redraw flood maps. As FEMA gets around to updating maps in other areas the effect will eventually be felt throughout the country. If you own a property in a current flood zone, expect changes, but even if you are not currently in a flood zone, stay alert. Many of the new flood maps are expanding flood zones to encompass areas not formerly considered flood prone.

Owners of properties affected by these changes are faced with some tough decisions. If you own your building outright you can decide how you want to react, but if your property is encumbered with a mortgage your options may be more limited. Lenders are keenly aware of these changes, and already typically require flood insurance for any property in which they have an interest which lies in a flood zone.

Fiduciary Liability

While often overlooked or forgotten, it's worth remembering that under the Employee Retirement Income Security Act (ERISA) trustees of retirement plans face a potential for personal liability arising from acts or omissions in their role as fiduciaries for those plans.

ERISA generally defines a fiduciary as anyone who exercises discretionary authority or control over a plan's management or assets; such individuals are required to act solely in the interests of plan participants. Fiduciaries who do not follow these principles of conduct may be held personally liable and responsible for restoring any losses to the plan. ERISA also gives participants the right to sue fiduciaries for benefits and breaches of fiduciary duty.

Many of our readers fall into this category as fiduciaries for their organization's retirement or benefits plan, so the question is, why is this important to you? As it happens, 401(k) fees have been in the spotlight recently. New federal fee-disclosure rules went into effect last year; 401(k) administrators are required to better identify the fees being charged to plan sponsors and participants. High fees, of course, can mean lower returns to participants, which can lead to lawsuits and allegations of breach of fiduciary duty.

A Yale professor was recently reported to be doing a study of 401(k) fees that involved a mass mailing to thousands of employers across the country who sponsor 401(k) plans, seeking information on plan fees. His theory is apparently that a percentage of them might have unusually high fees built in. He reportedly plans to publicize the findings from his research.

The Government Accountability Office did a study in April 2012; the average amount sponsors of small plans

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reported paying for record-keeping and administrative services was 1.33% of assets annually, compared with 0.15% for large plans. Fees don't tell the whole story, of course. A myopic focus on fees only (which can range widely) ignores services such as participant education, advice and automatic enrollment of workers, all of which typically come at a cost but also can improve retirement investors' returns. It's also important to weigh investment performance against the fees charged. Looking only at fees without considering services or performance criteria can give a distorted picture.

Nevertheless, there has already been an uptick in litigation tied to 401(k) fees, so prudent fiduciaries will find it worthwhile to take a look at this. In addition to reviewing fees and costs associated with your retirement plans you should also be reviewing your Fiduciary Liability insurance, which covers you for any personal liability you might incur as a plan fiduciary. Give us a call and we'll go over that with you.