Excess Liability: The Commonly Unknown Necessity for High Net Worth

By Sadie Bailey

Multi-million-dollar properties, high-value collections, and a myriad of impressive vehicles and vessels – this is often the standard for high-net-worth individuals, reflecting their positions and achievements. The cost of repairing or replacing such property is significant and therefore requires specialized insurance protection. Interestingly, these ownerships are likely not their biggest concern when it comes to insurance, for a reason you might not expect. Why is this?

The simple answer is exposure. While adequately covering these properties is an essential part of their insurance portfolio, it is not where they face the largest risk of retaining their assets and lifestyle. That risk comes in the form of liability arising from such ownership.

Liability is an unknown and uncontrollable exposure in both risk and loss amount. Your home, auto, boat, jewelry, or any other piece of property is measurable. There is a clear set amount to repair, replace, or rebuild. This may deviate based on the market, but that difference is typically marginal, and policies are often designed to allow for this. Liability, on the other hand, relates to a claim against you by another for injury to a person or damage to their property. An injury caused as a result of another's actions usually comes with a penalty and awarded amounts for pain and suffering or medical costs, which, by definition, are very hard to measure. The severity of the injury and time to recover are key, and some injuries can leave individuals permanently disabled, requiring medical care for the rest of their lives. In fact, the cost of such a loss would far exceed a loss where an individual dies as a result. On top of these costs would come the award to the injured party for pain and suffering. Pain cannot be taken away; compensation, therefore, can only come monetarily. Based on all these factors, one such loss could run into the tens of millions.

How likely is this? The chances of seriously injuring someone are slim, right? Statistically yes, but sadly easier than you think. Owning a home or rental, employing a domestic, and especially driving a vehicle or vessel all bring with them a possibility. The losses are often much easier than you imagine. Negligence just means an action or inaction resulted in injury to another, and negligence is all you need to be responsible. These are unintentional and accidental.

The best way to explain the ease of this possibility is through losses I have personally witnessed. These are not tales told within the industry but experiences with clients. I think they reflect the unexpected and uncontrollable situations these clients were in and the threat to their assets in ways that could not be imagined or, it turns out, avoided.

The first relates to a client who had a domestic employee working as a nanny at their home. This was not a live-in babysitter. The nanny was on her way to the client's home one morning, driving her own vehicle, when she struck and killed a pedestrian. Being a nanny on minimum wage, she did not carry high limits of liability, yet here was a situation where the individual killed was a father of young children. Our client, her employer, did carry a $5,000,000 umbrella, and by virtue of the fact that the nanny was on her way to the client's home, the award was made, and the personal umbrella paid the maximum policy limits. This was a clear indicator that regardless of actions, compensation came from the deeper pocket and better insured.

The second example comes from a client who owned a large boat and was traveling around a coastal area. There were a couple of individuals scuba diving, and sadly, one of these came to the surface into the propeller of the boat, killing them instantly. The accusation was that the boat was operating in an area it should not be and was too close to the shoreline; the client denied this and advised they were following regulations. Again, the $5,000,000 umbrella paid full policy limits.

In addition to the standard exposures you come to expect under liability, the High-Net-Worth product umbrellas also offer protection for exposure related to involvement in non-profit organizations, also known as Directors and Officers, and further domestic employee protection in Employment Practices Liability. Both activities bring a further threat against assets. Many believe voluntary work must be safe or they know and trust their domestic employee, but we still see liability suits from good Samaritan activities and a disgruntled senior employee suing for wrongful termination despite no longer being able to perform the duties they were hired for. The opportunities and scenarios are varied and endless.

The High-Net-Worth specialized carriers offer liability limits up to $100,000,000, far in advance of standard market options. The standard for middle-market carriers and direct writers is $5,000,000, an amount which typically runs dramatically short of the net worth and financial exposure many clients carry. They also are unable to offer the D&O and EPLI previously referenced. In my opinion, this is the largest indicator of a direct writer’s appetite and abilities and exactly what a high net worth individual should be looking at when reviewing and considering options. Often the biggest challenge lies in the history clients have with such agents; they started with this carrier/agent as a younger individual prior to the growth of their assets and have simply outgrown them. The incumbent agent may have a long-term relationship but not the experience, products, or interest to inform the client of higher options and needs.

They should also be thinking about how this will be viewed by a would-be injured party and their legal representative. Worth $100,000,000 with a $5,000,000 umbrella seems woefully inadequate given their assets, so aiming for just the umbrella limit is unlikely. Worth $100,000,000 with a $50,000,000 or even $25,000,000 excess liability is a different situation and viewed as more reasonable, as well as likely to cover a multitude of circumstances.

Finally, there is the cost. Surprisingly affordable given the coverage limits we are looking at. Or if that’s a concern, they can often offset the cost of significantly increasing their limit by changing a property deductible on a home. This allows them to protect assets while limiting out-of-pocket loss to a known property deductible amount, which also happens to deter claiming for smaller loss activity and therefore protecting their insurability. Have I mentioned that HNW insurers' home policies often waive deductibles on large losses? These stats and points often make the decision quite easy.

I thought this was worth writing about as it has had the largest impact for me as a High-Net-Worth focused personal insurance agent. I always think, if I can have them walk away with just one message from their time with me, this is it. This relates to the client themselves and their financial advisors; they are often the representatives we are in front of, and let’s face it, their own interests can be severely impacted by a client with significantly reduced or lost assets.