New Excess GL Facility Leverages Experience of Major Insurers for the Benefit of Policyholders in Large Loss Scenarios

By Michael Menapace, Esq

Brokers and companies routinely work to assemble multiple insurance policies to build towers of GL coverage. They now have a new option that eliminates much of the friction that can occur in the underwriting and claims process. Chubb, Zurich and National Indemnity (the reinsurance arm of Berkshire Hathaway) have formed a new facility that offers up to $100 million in excess or umbrella coverage in a single policy.

The new program seeks to eliminate some of the challenges policyholders may experience with more traditional towers of liability insurance. For example, when a mass-casualty event occurs, insurers at the primary and lower excess layers may be incentivized to seek an early exit from the claim with as little claim expense as possible and, as a result, may over-pay to resolve one claim while providing minimal support to the policyholder defending the other claims. Or, tension between layers can arise when upper-layer carriers nevertheless seek to place as much responsibility as possible on the lower-level carriers who are seeking to minimize their role.

On the coverage side, policyholders can find that their traditional layers of excess coverage may be subject to differing terms, such as whether they provide for a defense. And, even when the excess tower contains follow-form policies, inconsistencies among the carriers can occur when they take different positions on coverage, claim value, litigation/settlement strategy, etc. The result of all of this is that gaps can open in the multilayer tower.

These gaps are not just theoretical. A recent claim that was the subject of a lawsuit arising from a large casualty loss in Florida involved one excess insurer seeking to enforce an anti-stacking provision that limited coverage for an event to one payment from the insurers equal to the highest policy limit among the tower participants. In another claim, the higher layer insurers argued that their layers were not triggered because the lower layer insurer had improperly exhausted.

In addition to these examples, we've seen situations in which various excess layers contain different dispute resolution procedures, are subject to varying states' laws, or have requirements of being resolved in differing jurisdictions. Brokers and policyholders can find managing their excess tower a time-consuming and challenging experience at a time when they could be focusing on the defense of the mass casualty event or other large loss.

In contrast, the new excess program provides a single layer of commercial umbrella coverage up to $100M, typically following a $10 million primary layer. Many of the terms will be familiar to brokers and policyholders – Coverage A for Bodily Injury and Property Damage, Coverage B for Personal and Advertising Injury and an Optional Coverage C for Auto and Employers Liability.

A unique feature in the U.S., the program has "single-desk" underwriting style so that brokers can work with one point of contact for the underwriting of the entire layer of excess coverage. Flexibility is also an advantage because the program is being written on a surplus lines basis, which means there is more discussions can be had on terms and conditions.

Traditionally, general liability coverage is written on an occurrence basis, which can keep the insurer on the risk for decades after the policy period expires. Insurers price that long-tail exposure into premiums.

This new program can be more affordable because it is written on a claims made basis, while including a multi-year extended reporting period to protect the policyholder. Buy on a claims made basis can achieve cost savings for the policyholder compared to more traditional programs.

Just like underwriting, claims will be handled with single point of contact, with one of the carriers taking the lead. Once the claim is tendered and being defended, the fact that this group of leading insurers is on the risk means that the collective experience of some of the industry's biggest, most sophisticated carriers is at the disposal of the insured.

If a coverage dispute does arise, the policy provides for resolution via a single arbitration that applies consistent procedures and the law of a single state – again, streamlining the process and resolution for the policyholder.

While some of the features are offered in the London market, this provides brokers and policyholders with a U.S.-based solution with added benefits and features.

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