UMBRELLA INSURANCE PROBLEMS AND SOLUTIONS

Presented by Panelists

Todd Germano
Excess Casualty
Underwriting Officer
AIG Excess Casualty

Paula LaGesse
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Casualty—Zurich, N.A.
Zurich North America

Tim Molloy
Senior Vice President
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Moderated by

Steven D. Davis
Director
McGriff, Seibels & Williams, Inc.
Birmingham

Since they are intended to cover liability from catastrophic events, umbrella liability policies are arguably the most important policies that contractors or project owners buy. Unfortunately, this line has been the most affected by the hard market with skyrocketing premium increases and substantial coverage restrictions. In this session, a panel of experienced players in the umbrella market will review the problems contractors (and their agents/brokers) are facing, offer advice and counsel on how to deal with those problems, and give their predictions for what the future holds. Attendees will leave with a better understanding of the direction the umbrella market is moving and how to prepare for the changes.

Tuesday, November 12, 2002

Workshop B

INSURANCE IN TOUCH WITH BUSINESS

CNA has provided insurance solutions to construction businesses worldwide for over 100 years. This depth of experience, combined with our understanding of the industry, has made CNA the preferred choice of more contractors than any other insurance company.

The construction industry faces a variety of risks and exposures. CNA and your local insurance agent or broker can provide the insurance that best meets your individual company's needs. Together we can work with you to reduce your exposures and protect your assets.

CNA construction products are tailored to small, medium, and large businesses. Our core strengths—comprehensive property and casualty, surety, and professional liability coverage—combined with financial strength, offer outstanding value to all construction businesses.

For small and medium businesses, CNA offers basic coverage such as Workers Compensation, Commercial Property, and Commercial Umbrella. Your local insurance agent can review the entire CNA product line to show you how you can create truly customized protection.

For larger construction businesses, our Risk Management team can help reduce loss costs, enhance productivity, and facilitate communications to employees. We offer a variety of benefits, including claim service, cost management services, fraud protection, information services, risk control, and workplace productivity seminars and planning.

CNA's Surety operation, the largest publicly traded surety company in the U.S., provides all types and sizes of contract and commercial surety bonds in all 50 states and many foreign countries, with a focus on small and middle-market contractors with bonded backlogs up to 150 million. We are known for our consistent and reliable approach to meeting our clients' needs.

In partnership with Victor O. Schinnerer & Company, Inc., CNA has provided professional liability protection to architects, engineers, and contractors for more than 45 years through our AEC Design Liability coverage. We offer professional and pollution liability programs to address continually evolving project delivery techniques and methods. Whether your firm is providing value engineering, design, design-build, or construction management services, we can tailor a program to meet your needs.

Maintain and protect your business and your assets by obtaining customized insurance coverage, selected especially for you. To find out how, visit www.cna.com or contact your local independent CNA agent.

Todd Germano
Excess Casualty Underwriting Officer
AIG Excess Casualty

Mr. Germano is a panelist for Workshop B, "Umbrella Insurance Problems and Solutions." He has been with American Home/AIG since 1997. Before becoming excess casualty underwriting officer, he served as divisional vice president of national accounts, vice president of field operations, zonal vice president, and quarter club underwriter. He began his insurance career in 1986 as a policy analyst with Hartford Steam Boiler Inspection and Insurance Company. In 1988 he joined the New York branch of CIGNA's Montgomery & Collins where he was involved in the production and underwriting of all lines of coverage, including umbrellas. Mr. Germano left Montgomery and Collins in 1992 to underwrite umbrellas and property insurance at Professional Risk Brokers, a division of Great American, until he joined AIG in 1997. He holds a B.S. in business administration from University of Connecticut and an M.B.A. from Fordham University.

Paula LaGesse
Regional Manager—Excess Casualty
Zurich North America

Ms. LaGesse is a panelist for Workshop B, "Umbrella Insurance Problems and Solutions." She is the South Central regional manager of Excess Casualty, a part of Zurich's Specialties Division. Based in Dallas, she is responsible for underwriting, marketing, and management of a diversified portfolio of medium to large umbrella and excess liability risks, including construction and wrap-ups.

Prior to joining Zurich 8 years ago, Ms. LaGesse worked for Southern Risk Specialists (Lexington Insurance Company), handling umbrella and excess, primary products, primary demolition contractors program, employment practices liability, lawyers professional, miscellaneous E&O, etc. Ms. LaGesse has 18 years of underwriting experience with a strong emphasis on umbrella liability.

She graduated *magna cum laude* from Texas Woman's University with a bachelor of science degree in psychology.

Tim Molloy
Senior Vice President
Swett & Crawford

Mr. Molloy is a panelist for Workshop B, "Umbrella Insurance Problems and Solutions." He serves as senior vice president of Swett & Crawford in Woodland Hills, California. He has 26 years of experience as an excess and surplus lines broker. His expertise is in umbrellas, product liability, self-insured retention programs, nursing homes, risk purchasing groups, commercial contractors, and commercial contractors wrap-ups. His thorough knowledge of the market and his extensive market contacts have contributed to his proficiency in new business development, large account management, and program design.

Previously, he was with Sherwood Insurance Services, which merged with Swett & Crawford this year. Other positions he has held include vice president—casualty manager and various other roles with Alexander Howden North America, Inc.; and assistant vice president and casualty manager with Risc, Inc. (Dub Martin, Inc.).

Mr. Molloy is a member of the Texas Surplus Lines Association and served on its Ethics Committee. He holds a B.S. in insurance from San Diego State University.

Steven D. Davis
Director
McGriff, Seibels & Williams, Inc.

Mr. Davis is moderating Workshop B, "Umbrella Insurance Problems and Solutions." He is senior vice president and director of Construction Risk Services of McGriff, Seibels & Williams in Birmingham. He is the practice leader for Construction Risk Services at MSW and is responsible for negotiation, placement, servicing, and client presentations to the construction industry. He is recognized throughout the industry in program design and alternative risk financing methods, such as captive insurance companies. He is a past recipient of IRMI's Words of Wisdom award, and he is widely published in insurance and construction periodicals. In addition to the IRMI Construction Risk Conference, he also participates on the national construction risk management speaking circuit for organizations such as AGC, CFMA, and AICPA. He was a contributing author for *Construction Accounting Deskbook 2000/2001*, published by Harcourt, and has recently authored the national AGC's new publication titled *Risk Management, Insurance & Bonding for the Construction Industry*. During his career, Mr. Davis has participated and been responsible for designing and implementing risk management programs for companies listed in ENR Top 200 as well as establishing risk funding alternatives, such as captives, rent-a-captives, self-insurance, etc. Not only has he developed domestic programs, but he has also participated in several international construction projects.

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In Their Words…

In preparation for this discussion, we asked each of our panelists to summarize what they believe are some of the most important issues or challenges being presented by the umbrella marketplace. Their responses are presented below.

Workshop B

STEVEN D. DAVIS
Director
McGriff, Seibels & Williams, Inc.
Birmingham, AL

The umbrella/excess market has deteriorated to a point where many contractors are asking the question, what can be done to control the rising costs, if anything?

The panel workshop is designed to not only give the audience an overview of the marketplace, but also provide some valuable insight into the external influences of both coverage and pricing parameters.

This management begins with the insurance submission and specifications that will be provided to the marketplace. Three years ago, the market was flush with potential underwriters who would entertain most classes of business. Today's environment is much different and requires the use of techniques that can impact the coverage terms and the pricing methods.

Critical thoughts include:

- Type of construction work and operations and in what states
- Type and number of fleet units, radius and garaging
- Condition of historical auto and liability losses, focusing on losses excess of $50,000 with details of claim status
- Any residential or multi-family construction performed? If so, where?
- Payroll and receipts
- Fleet safety and maintenance programs
- Condition of subcontract agreements and whether have audits been performed
- Impact of corridor deductibles on excess pricing
- Residual exposures for OCIPs
- What does the Web site say about operations and type of construction?
- Be careful in committing to higher limits
- Does allocation of underlying premiums impact the primary excess?
- Flat premiums, 100 percent earned or adjustable rates

These areas, among others, will impact the coverage sought as well as the pricing of limits, particularly the first $25 million. Significant thought and effort needs to be placed into the submission and marketing phase of account placement. It creates the first impression that an underwriter will have, and once submitted incorrectly or haphazardly, it is difficult to change.

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TODD GERMANO
Excess Casualty Underwriting Officer
AIG Excess Casualty
New York, NY

The umbrella marketplace continues to see lead umbrella writers reducing capacity offered, restricting classes of business, restricting terms and conditions, and requiring higher occurrence and aggregate attachment points.

Many markets that previously were lead umbrella markets offering $25m lead limits are now either only offering $10m to $15m lead umbrellas or have moved their participation to higher attachment points. When they are offering lead umbrella terms they are generally more restrictive and often require higher attachment points. When insurers move to higher attachment points, capacities of $25m are still regularly available.

The changes we are seeing in the umbrella marketplace are a result of dramatic increases in loss severity for the 1997-2000 policy years. Severity for products liability, automobile liability, and general liability has increased at two and three times the rate of the policy years from 1990 to 1995. This abrupt change has seen the $1m attachment point being breached with a frequency that has made a $1m attachment point equivalent to a buffer layer. Additionally, losses exceeding $10m have more than doubled over the last 3 years creating a situation that requires underwriters to look at attachment point to remove exposure to frequency losses as well as adjust other terms and conditions to address the increased likelihood of a loss approaching $10m.

All these factors have had a dramatic affect on the landscape in the umbrella marketplace at a time when other lines of insurance are experiencing their own difficulties that have further strained the ability of insurers to continue conducting business the way they have in the past.

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PAULA LAGESSE
Regional Manager—Excess Casualty
Zurich North America
Dallas, TX

Today's umbrella/excess liability insurance market presents many challenges, both old and new, for underwriters, brokers, and insureds, particularly in the construction industry.

The events of September 11th have changed our lives and created a whole new exposure for insureds and insurance companies—terrorism. "Mold" has taken on a whole new meaning in the construction and insurance industry. Mold is ubiquitous so it is not new per se but it has recently escalated into a difficult problem. There are many other challenges such as adverse trends in litigation, increasing product defect claims, EIFS, professional liability, pollution, and reduced capacity in the umbrella arena, just to name a few.

From an umbrella/excess liability perspective, I see three general issues that I believe we as underwriters, brokers, and insureds can solve ourselves. These are:

A basic lack of understanding of the true purpose of umbrella/excess liability coverage;

Inadequate primary insurance limits; and

Lack of communication.

In a nutshell, the true purpose of umbrella/excess liability coverage is to protect the insured from *catastrophic* loss. A catastrophe is a great disaster or misfortune. It is not everyday occurrences. An umbrella policy is not meant to drop down and become primary over an exhausted underlying aggregate. The umbrella contract should never be involved in claim frequency; it is meant to be a catastrophic cover only.

Because of adverse trends in litigation, higher claims costs, large jury awards, and new exposures, the standard primary limits for GL/Products-Completed Operations and Automobile Liability are no longer adequate to preserve the umbrella coverage for its true purpose. We need higher underlying limits. As an umbrella underwriter, I contemplate being there for the insured in the event of a large, unintended, and unforeseeable loss. I do not contemplate being involved in non-catastrophic claims.

Lastly, I believe that many problems can be solved through honest and open communication among all parties involved. As umbrella/excess underwriters, we tend to be farther removed from the insured. This does not facilitate good communication. Brokers, underwriters, and insureds need to sit down together and discuss issues, problems, concerns, ideas, potential solutions, etc. By doing this, we get to know each other and to understand firsthand what the issues are from the perspective of each representative. We can then build strong, long-lasting relationships that benefit all parties and will serve us well in the long run.

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TIM MOLLOY
Senior Vice President
Swett & Crawford
Woodland Hills, CA

It's no news to anyone in the business that the umbrella marketplace has changed dramatically in the last year and a half. Depending on their loss experience, contractors are generally seeing 25 percent to 100 percent premium increases on renewal. A very clean account will usually experience a 25 percent to 30 percent increase.

In the soft market, insurers would provide excess coverage over just about any type of liability policy other than D&O. However, insurers are now cutting back on the fringe coverages they once provided so liberally, and we're headed back to the days of plain vanilla forms. For example, it is now very difficult to get umbrella insurers to cover rip and tear, professional liability or contractors pollution, if it can be done at all. It is also tough to get them to modify contractors limitation endorsements to provide excess and DIC coverage over an OCIP.

Umbrella insurers are also raising their minimum underlying limits, and it is becoming increasingly uncommon to write excess of a $1 million each occurrence, and $2 million general aggregate, and $2 million products/completed operations aggregate ($1/$2/$2 million underlying limits). In particular large contractors are now being forced to buy $2/$4/$4 million underlying limits.

Auto losses have always been the major cause of umbrella claims, but for some reason umbrella underwriters have historically focused on the general liability exposure. This has now changed and insurers are paying careful attention to fleet exposures. Some contractors are being rejected altogether because of their auto claims or practices that may increase the exposure, such as when haulers are paid by the load.

Some of the biggest changes have occurred with respect to umbrellas over wrap-up programs. Capacity for wrap-up umbrellas is probably 25 percent of what it was 3 years ago, minimum premiums are way up for the upper layers, and, for some reason, very few markets will write a wrap-up on a project that will last more than 42 months.

I think the market is going to get worse before it gets better, but I do expect it to flatten out sometime around the middle of 2003.

I have three points of advice for agents, brokers and contractors concerning umbrella placements during the next 6–12 months:

1. Be prepared for the worst. You’ve had a nice ride for 7 years, and now you’ll probably have to pay for the trip.

2. If you are offered some of the fringe coverages, such as professional or pollution liability, buy them regardless of the price. Once you give them up, it will probably be a long, long time before you can get them back in your program.

3. Put together a very complete and comprehensive submission. In doing so, be sure you pay attention to your fleet exposure, providing explanations of large losses and a description of your fleet safety program.

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