Making the Most of Commercial Excess

Commercial Excess is an extra layer of protection designed to trigger when the liability on existing underlying policies has been exhausted. It gives businesses added liability protection beyond the limits of primary General Liability, Auto Liability, Liquor Liability, etc.

At its simplest, excess insurance is coverage that kicks in above, or in excess of, a certain dollar amount for insured underlying coverages. For the average person, the best example is car insurance deductibles.

If you have an excess policy, your primary liability coverages act sort of like a deductible and the excess limits would pay after the underlying limit is paid. For example, let's say you have a General Liability policy with a limit of $1 million. You also have an Excess Liability policy with another $1 million. This gives you a total of $2 million in General Liability coverages. You have a customer that slips and falls on your company's premises sustaining a concussion with long-term neurological consequences. They sue you for $1.5 million. The General Liability would cover the first million and the Excess Liability would handle the remaining $500,000. If there were a claim for $3 million, the General Liability would cover the first million, the Excess Liability would cover the second million, and your business could still be on the hook for the remaining $1 million.

$1.5M Claim Scenario

$1M (General Liability)
+ $1M (Excess Liability)

$2M total coverage with both policies

covers $1.5M claim scenario

$3M Claim Scenario

$1M (General Liability)
+ $1M (Excess Liability)

$2M total coverage with both policies

$1M not covered / business responsibility

When talking about the Excess and Surplus (E&S) market, however, the risks can be more complex, and offering the right coverages become more nuanced. Read on for answers to some of the more common questions about excess insurance.

What kinds of risks often need excess insurance?

Most savvy insureds these days are aware that they need excess limits. The smartest business owners prepare for the unexpected. Some of the more common insured types in the E&S contract binding market are:

- Contractors (faulty work, construction defect, third-party accidents)
- Apartments/Dwellings (slip & falls, crime, life safety)
- Lessor's risk building owners (slip & falls, property damage, contractual disputes)
- Stores (slip & falls, crime, customer injury)

What is the difference between excess and umbrella insurance?

Both umbrella and excess policies are designed to pick up where the underlying liability insurance policies leave off. However, they differ in their coverage terms.

An excess policy is considered a Limited Follow Form in that it closely matches the terms of the underlying policies and will never be broader. Excess Liability does not expand the terms or scope of coverage, but rather provides higher limits.

Umbrella policies, however, not only cover claims exceeding the limits stipulated by the underlying policy, they can also broaden coverage for losses outside of those outlined within the underlying policy.

Why would someone need excess insurance?

Some accounts have true excess severity potential. Think of things like catastrophic losses from airlines or mass transit. Other examples include the following.

- Nationwide products that have mass bodily injury potential like an automaker tire recall.
- Latency issues such as pharmaceutical and chemical exposures.
- The sheer wealth of an organization (deep pockets) opens them up to lawsuits. (Walmart, GE, Apple, etc.)

However, these are specialty insureds and typically go through an entirely different distribution system than the typical E&S market. The average insured buys excess due to contract requirements, based on legal advice, simple awareness of the need for protection from the "unexpected," and lastly because it is generally inexpensive.

Can I write standard lines excess over an admitted Business Owners policy?

Yes, you can.

When should I offer excess coverage?

You should offer excess over all qualifying General Liability accounts.

How does excess insurance interact with other coverages?

This will depend largely on the terms and conditions of the underlying coverages. The limited Excess Liability policy is designed to closely follow the terms of each individual underlying policy, subject to its own terms.

What is a Named Insured?

A Named Insured refers to a person or firm who receives all of the protections of the insurance policy. The Named Insured is the party responsible for purchasing the policy, making decisions about it, and paying the premiums. They are also sometimes called the policyholder or primary insured.

What is an Additional Insured?

Additional Insured is a term used to describe a person or an entity covered under someone else's insurance policy. Additional Insureds are added to the underlying General Liability policy via specific endorsement language. The language of the endorsements can vary but in general, limits the insurance coverage arising out of certain circumstances while they were carrying out business activities related to the Named Insured. A few examples of common business relationships that create a need for additional insured coverage are landlord and tenant, general contractor and subcontractor, and product manufacturer and vendor.

Do I include the premium from Additional Insured charges in my underlying General Liability rating?

Yes. On a typical Excess Liability policy, any Additional Insured scheduled on the underlying General Liability policy is automatically covered. For that reason, you would include any additional premium for Additional Insureds.

Does the excess drop down for sublimited coverages?

No. The excess policies do not drop down for sublimit coverages.

Can I write excess with Terrorism Risk Insurance Program (TRIA) if the underlying doesn't have TRIA coverage?

No, terrorism must be purchased on the underlying General Liability in order to purchase on the excess.

Do I schedule all of the Named Insureds on my Excess Liability policy?

Yes. While most excess policies will automatically cover any Named Insured scheduled on the underlying General Liability policy, it is a customary practice to schedule them on the Excess Liability policy as well.

Do I schedule all of the covered locations on my Excess Liability policy?

If the intent of the Excess Liability policy is to cover all of the locations that are also covered by the underlying General Liability policy, then no, it is not necessary to individually schedule locations on the Excess Liability policy. If the intent is to limit the Excess Liability policy to only specific locations covered by the underlying General Liability policy, but not all, then yes, you should schedule only those locations on the Excess Liability policy.

What are examples of simple, unexpected losses?

Retail Establishment
An elderly lady was on her routine grocery trip when she slipped on the floor, sustaining permanent damage to her hip and leg. She required multiple surgeries as well as rehabilitation and could no longer live unassisted. She alleged the floor had been wet and filed a bodily injury claim against the grocery store owner for $3 million.

Lessor's Risk
A commercial tenant wanted to renovate his rental space. With the landlord's permission, the tenant hired a contractor to renovate the space. One of the contractor's workers fell down an elevator shaft and was severely injured. The tenant, who did not have Additional Insured or Hold Harmless protection from the contractor, was found solely liable for the $2.5 million claim.

Habitational
A tenant of an apartment building hosted a dinner party for six in her second-floor unit. While waiting for dinner, guests were enjoying the evening on the outside deck until it collapsed and fell. All six guests suffered multiple injuries from this single occurrence. Bodily injury claims were filed against the property owner for more than $4 million.