



# It Never Rains in Texas So Why Buy an Umbrella?

## Why a Community Association Needs Umbrella Liability Insurance

by Joel W. Meskin, Esq., CIRMS

"It will never happen in our community." That is what the homeowners association in Northern Indiana thought when they were tagged with a \$30.7 million jury verdict. Who thought they would be found negligent for failing to put up a sign indicating that a pond would be dangerous to walk on when frozen. Who gets to pay the difference between the \$30.7 verdict and the \$6 million coverage maintained by the association – it was only a \$24.7 million shortfall. Can you spell "Special Assessment?"

Catastrophic accidents happen, and yes, sometimes the association is negligent. A child drowns due to a bad pool drain cover; a fence falls off a high rise building causing injury or damage; a balcony collapses with people on it causing death and destruction. Bad stuff happens and sometimes the association's negligence does cause damage. Even the best run and managed associations have accidents. Yes, if we had the odds that a catastrophic incident could happen when we play black jack, we would probably spend our days in Las Vegas getting rich. However, in a community association, the risk is not an individual risk. The risk we are evaluating is a common risk of the association as a whole. The board of directors managing an association has a fiduciary duty. That fiduciary duty requires that the common interest of the association be placed above individual interests.

If someone loses a child or a person sustains a debilitating injury, how much is enough? If a board of directors or employee of the association is found to have discriminated or harassed someone, how much will the jury award in damages? How much is damage due to defamation worth when a board wrongfully asserts that an individual is a sex offender in their newsletter? What is the value of a wrongful eviction making a

veteran and his family homeless? Unfortunately, none of us has a crystal ball and even fewer of us can read the minds of the jury.

At the end of the day, like with most other board decisions, how much insurance an association should have for limits of liability is a "cost benefit analyses." Should an association carry \$1 million, \$2 million, \$5 million, \$15 million, \$25 million or \$100 million? In New York, associations most often request \$100 million in limits. Other areas of the country think more than \$1 million is not necessary. At the end of the day, how much is a board of directors willing to pay to cover the odds of a catastrophic incident happening in their association: \$10 per unit, \$20 per unit, \$50 per unit? I often ask a board what they pay for their personal auto insurance which is normally anywhere from \$1,000 to \$3,000 per year. A board could probably get a \$15 million limit of liability for \$2,000 for a 100 unit association. This would be approximately \$20 per year per unit. A unit owner probably pays this amount a week for coffee on the way to work. This would be less than an additional \$2 per unit per month. Would the unit owners be willing to pay \$5 per month? Have they been asked?

An association insurance puzzle really includes two types of insurance. First, there is what is known as first party insurance such as fire insurance which provides coverage for direct physical damage to the association's property. On the other hand, there is a third party coverage which provides protection. For the association when a claim or lawsuit is brought against it or others insured under its policy claiming that as a result of the association's conduct, the third party bringing the claim of lawsuit has been injured. In the first party coverage, the insurance is purchased for the value of the property being protected. In simplistic terms, the condo building is worth \$5 million, so you purchase \$5 million in insurance. However,



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in a third party matter, as discussed above, we do not know in certain terms what the potential damages or injuries are worth. There are many variables such as the country and potential jury pool, the emotions of the claim (very often regardless of whether the association was at fault) and as much as we hate to admit it, the attorney handling the case for the third party claimant/plaintiff.

The umbrella policy for the association needs to provide limits in excess of the third party coverage in the association portfolio. This means it should provide coverage excess of the general liability policy, the directors and officers liability policy, the employment practices liability coverage and if party of the insurance plan, auto liability. As with any insurance, not all umbrella policies are created equal. It is imperative that the umbrella policy being purchased provides the limits to cover all primary third party coverage for the association. At the risk of preaching to the choir or talking myself blue in the face, the use of community association insurance professional specialists is the best solution for making sure the association has the best coverage.

At the end of the day, how much is an association willing to spend to sleep well. The good news is that this sleep insurance is truly an affordable product.

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