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The Cost of Aggregate Limits

When purchasing an insurance policy, municipalities are diligent in examining product and price to find the best solution for their needs. However, there is one area where decision makers may believe their municipality is fully covered when in fact they could end up funding claims.

The key issue here is a special limit of liability known as the "Aggregate Limit". The aggregate limit is separate and distinct from the "per occurrence/claim limit", which is the maximum amount an insurer will pay per claim. In contrast, the aggregate limit is the maximum amount a policy will pay out as a result of claims during the policy year. It is an "annual cap" on policy payments.

Aggregate limits may be found in Municipal Liability Policies, Commercial General Liability Policies and Errors & Omissions Policies.

Examples of Aggregate Limits

Fact: You purchase a Public Officials Errors & Omissions Policy with a \$5 million per claim limit. The policy also has a \$5 million aggregate limit.

Claim #1: In 2005 a developer acquires land and begins construction of condominiums before obtaining title and building permits. You, as the municipality, allow the construction to continue before reviewing the architectural and engineering drawings. Problems with the roof trusses and fire separation walls are discovered and the units are ordered evacuated. In February 2006, the developer claims against your municipality for \$2.65 million.

Claim #2: In May, of that same year, a second building inspection claim is presented. A townhouse development that was built in 2003 is found to never have had an inspection by a building inspector. Several code infractions are discovered and all unit holders are evacuated from their units. A claim is presented against the municipality for \$3 million.

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In response to many requests from our clients, we are bringing back Cowan News in it's original format. An electronic version can also be found at www.frankcowan.com

Pandemic - Planning for Continuity

Fears of an influenza pandemic have been sparked by the emergence of the avian flu in Asia and its spread to parts of Europe and Africa. While it is still mostly an animal disease, health experts fear the virus could mutate into a form more dangerous to humans. If that happens, millions could die, and some are wondering how we would deal with a devastating death toll and its domino effect on the Canadian economy and delivery of services.

In the last century, there were three influenza pandemics. The most devastating was the Spanish Flu in 1918-19, which killed an estimated 50 million people - a death toll higher than that in the First World War.

A pandemic today could rival those numbers, given the globalization of the world and ease of travel. It might not be enough to rely on vaccines. Anti-viral drugs may not be available at the start of the influenza, or in limited supply, and their effectiveness will be unknown until they are administered.

Unlike natural/physical disasters, a pandemic would cause no damage to the infrastructure and building inventory. Rather, the impact on an organization will be staff absenteeism.

The Impact on Essential Services

Experts predict that 15 per cent to 35 per cent of employees may be off work due to illness. These estimates do not include the *healthy employees* who will be away from work because they are caring for ill family members.

Others will stay home for fear of being exposed to the virus in the workplace, or on public transit.

There will also be quarantines, community containment measures, school closings or voluntary roles to fill in the community. Suppliers, contractors and neighbouring municipalities will face the same human resource challenges. It won't be business as usual.

Staff shortages will impact the delivery of municipal services. Yet, there are municipal services that must be delivered because of their impact on the health and safety of the public, because of regulatory obligations, or due to contractual commitments. There will also be the expectation from the public that municipal services continue.

The delivery of essential services will also be impacted by supply chain disruptions and changes in demand for services. Supplies that are purchased from foreign manufacturers will not be available in the same quantities, especially if borders are closed. The manufacture and delivery of Canadian supplies, which travel long distances by rail, truck or air would also be affected by employee absenteeism.

The demand for services will change. Certain services will surge in increased activity (emergency response, clean water, communication systems) while others will dramatically decrease (recreational activities) or may have to be terminated. A termination in the provision of certain services may be mandated by a need to use facilities for non-traditional purposes. Healthcare facilities will be overcrowded and will require additional space. If supplies are stockpiled, additional storage space will be required. Arenas may need to serve as temporary mortuaries.

As with any risk that threatens the delivery of essential services, continuity planning is imperative.

What is Continuity Planning?

Continuity Planning is a proactive planning process that ensures that essential services are maintained during a disruption. It is **not** about resuming operations or recovering assets **after** a **disaster** but rather about ensuring that essential services continue to be available **during** the **disaster** with little or no interruption.

Steps in the Planning Process

1. Appoint a pandemic coordinator/steering committee to oversee the planning process over all service units.
2. Identify the essential services that must be maintained by location and function.
3. Appoint a planning team within each essential service unit to:
 - a. Identify essential employees
 - b. Identify the required skill sets of these employees (certification; licenses)
 - c. Identify opportunities for cross-training/staff relocation/staff containment
4. Prepare a Continuity Plan for each essential service.
5. Write a Pandemic Preparedness Checklist to track the planning process.
6. Monitor, test and revise each plan as required.

Issues to Consider

- Training of an ancillary workforce (volunteers, contractors, retirees)
- The liability, insurance, regulatory and licensing requirements for such a workforce
- Collective agreements with respect to staffing shortages, increased overtime, absence policies, and contract/ancillary workers

- Occupational Health & Safety Legislation / Employment Standards / Labour Act
- The feasibility of flexible worksites and flexible hours
- Enhancing IT infrastructure to support telecommuting/remote access
- Containment measures for highly skilled employees
- Immunization policies and ethical issues
- Provision of infection control supplies
- Infection control measures (i.e., ill employees who report to work)
- Employee access to and the availability of healthcare services during the pandemic
- Employee access to mental health and other community support services during the pandemic
- Employee special needs (medication)
- Sick leave absence policies unique to a pandemic
- Legislative and legal framework - does your Business Continuity Plan conform?

How will the policy respond?

Claim #1: Since the \$2.65 million is within the limit per claim of the policy and it is also within the aggregate limit, it would be paid fully by the insurer.

Claim #2: The policy will not be able to pay the full claim of \$3 million. It will only be able to pay \$2.35 million because that is all that is left after paying Claim #1. That means the municipality will have to find the funds to pay the remaining \$650,000.

How will you finance the remaining amount?

One solution is to look to an Excess Policy. It will be necessary to examine the Excess Policy's terms and conditions. Does the policy have a "drop down feature" or does it require an underlying limit of \$5,000,000? If there is no "drop down feature" then the Excess Policy will not respond because the underlying limit has been exhausted.

Therefore the municipality will have to fund the remaining \$650,000.

Of more significance in the above examples is the fact these claims have occurred within the first five months of the policy term. That means there is no further protection afforded by this policy for the remaining seven months and leaves the municipality on the hook to pay for this shortfall in coverage.

Are aggregate limits really right for your policy?

While policies with an aggregate limit can seem like a good deal, simply because they tend to be less expensive, it may mean paying more in the end.

Mould - Pay Now or Pay Later

Everyone likes to save a few bucks, and municipalities are no exception. But if a building has water damage, the cheapest route may be to call in the remediation professionals sooner rather than later.

Mould requires three elements to grow: moisture, heat (2° - 40°C) and an organic food source. It is capable of growing on a wet surface within 24-48 hours. Left unchecked, mould will happily consume any organic food source it encounters. This includes your important documents, protective equipment for emergency services personnel, drywall and carpets. Mould reproduces by means of spores, which may exist for many years waiting for the right conditions to begin growing.

Spores require an external assistance to migrate. The air currents created by fans or ventilation systems are ideal ways to spread spores throughout a building.

We recently had a municipality attempt to remediate its own building after it sustained water damage.

In order to dry out the building, the municipality brought in fans. The fans spread the mould spores throughout the facility and the mould then damaged valuable equipment. In this case, the equipment could be salvaged, but it required cleaning by the only qualified individual in the province. The cost to repair the equipment ended up far exceeding the initial cost of drying the building.

To save time and money following water damage, contact a qualified restoration company that specializes in identifying and removing mould from buildings.

Frank Cowan Company

4 Cowan Street, East
Princeton, ON N0J 1V0
Toll free: 1-800-265-4000
Phone: 519-458-4331
Fax: 519-458-4366

www.frankcowan.com