



PRIVATE CLIENT SERVICES

# Liability Insurance

Protect Yourself Against Hidden Exposures

PROTECTING YOUR LIFESTYLE, SAFEGUARDING YOUR LEGACY.®



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## INTRODUCTION

Trends in litigation and rising jury awards are increasing liability exposures, especially for high-net-worth individuals and affluent families. A lawsuit is often a stressful event that disrupts your life and distracts you from your commitments. Having appropriate insurance coverage can relieve the stress, emotional upset, and financial strain that litigation can cause.

In the United States today, social inflation is making multi-million-dollar lawsuits – as well as judgments in the tens of millions – more common than ever before. In this environment, you may find yourself or your family the target of a high-stakes lawsuit stemming from a variety of incidents. From an auto accident that causes serious injury or death, to accidental injury on a family's property, to accidental damage to a third party's property, unintentional actions nevertheless can trigger liability claims.

Not all existing policies, however, may respond to every type of claim. Personal and commercial policies are

not interchangeable. They are designed to cover different exposures, and it can be challenging for policyholders to fully understand the scope of coverage these policies provide. This can lead to hidden exposures.

Adding to the confusion is an increasing connection between personal and business activities. For example, during the coronavirus pandemic, many business activities may be conducted from home or another remote location. Personal policies such as homeowners, private-passenger auto or personal umbrella generally will exclude claims stemming from a business relationship. Likewise, commercial policies are

not intended to cover your personal exposures. Depending on the nature of a liability claim, one or more specific forms of commercial coverage may provide the best protection.

In addition to ensuring adequate limits of liability protection, you should be aware that additional coverage may be needed to address the risks of employing staff and serving on an organization's board. A holistic approach to liability exposures can inform risk your management strategies and mitigate the risks. This paper explores some of the trends in liability claims and coverages that can offer peace of mind.

# Where The Liability Is

In recent years, changing attitudes in the US legal system have led to more lawsuits and skyrocketing jury awards, as jurors become willing to depart from legal guidelines in compensating plaintiffs. In addition, more lawsuits are receiving funding from hedge funds and private equity investors. These phenomena, known as social inflation, are contributing to a surge in high-value verdicts and settlements.

“Nuclear verdicts” in the billions of dollars are becoming more common against large corporations, and jurors’ desire to punish defendants is raising the bar a variety of liability claims. According to the Insurance Information Institute, citing data on personal injury award trends, the average jury award exceeded \$1 million for years, dropped slightly below that figure for a few years, but it is increasing again.<sup>1</sup> Barring tort reforms and a shift in public attitudes away from litigation, social inflation appears to be a long-term trend.

From an insurance perspective, social inflation creates a need to update and increase limits. For example, a liability policy with \$1 million in coverage no longer goes as far as it once did. Adding more coverage, aligned with current and anticipated exposures, may be prudent for many individuals and families.



# Common Sources of Liability

## SWIMMING POOLS

Pools can be dangerous and should comply with local safety standards, and pool owners should be properly insured. According to the Centers for Disease Control and Prevention, drowning is a leading cause of death for children ages 1 to 14.<sup>2</sup> Among children ages 1 to 4, most drown in residential swimming pools. Because of the severity of injuries that can occur in a swimming pool, it's important to watch children in and around your pool, learn water safety skills, keep lifesaving equipment in an easily accessible location, and install proper security equipment, including fencing or other barriers.

## DOMESTIC EMPLOYEES

Domestic employees often work so closely with their employer that they are considered part of the family. However longstanding the relationship may be, it's naïve to assume an employee won't bring a lawsuit if he or she becomes injured or believes his or her rights have been violated. Some insurers will provide a background check for prospective employees if you plan to hire someone who will be working in your home, including but not limited to caretakers, groundskeepers, drivers and nannies. It's important to be aware of your legal responsibilities as an employer.

## HOME ENTERTAINING

Entertaining at home may have become less frequent during COVID-19, but nevertheless is a popular activity that may resume eventually. During the pandemic, entertaining guests at your home may create liability exposure if guests contract the coronavirus. Even under normal conditions, hosting guests in your home can open the door to potential liability claims. Social host liability, the legal term for the responsibility of a person who provides alcohol to a guest, can have a serious impact on the host. According to the Insurance Information Institute, social host liability laws vary widely, but 43 states have such laws in place. Most of these laws also offer an injured person, such as the victim of a drunk driver, a method to sue the person who served the alcohol. In some circumstances, criminal charges may also apply. It is important to ensure guests are not overserved and to keep intoxicated guests from driving when they leave the social event. It also is illegal in every state to serve or furnish alcohol to minors.



## SOCIAL MEDIA AND ONLINE ACTIVITY

Despite an individual's privacy settings or the premise that posts will "disappear" from some social media sites after a certain amount of time, social media use puts you at risk for personal injury lawsuits, including libel and slander. Most social media terms of service agreements indicate that personal information will be shared with others and any content submitted is public by default. If you post to any social media sites, it's important to act responsibly and consider the consequences if your post was published on the front page of a newspaper. For example, social media and other online activities can trigger lawsuits alleging defamation, cyber bullying, fraud or other charges. A Pew Research Center study in 2018 found that cyber bullying is prevalent: 59% of US teens have experienced some form of bullying or harassment online.<sup>3</sup> A number of states have statutes criminalizing bullying, but civil litigation remains an option for victims nationwide, and US courts continue to hear cases filed against schools and parents in bullying cases.

## BOARD MEMBERSHIP

When serving on a board, establishing best practices for your role and following the three duties of care, loyalty and obedience will help to avoid claims. Although public companies are most often the targets of shareholder claims and class-action suits, not-for-profit and private entities are not immune from litigation. It is important to understand the risk of lawsuits – whether brought by a shareholder, employee, government body, competitor, customer, or other third party – and how you can be protected.

## DOG OWNERSHIP

Dog bites and other dog-related injuries are frequent and costly, for a variety of breeds. According to the Insurance Information Institute, liability claims relating to dog bites and dog-related injuries cost homeowners insurers \$797 million in 2019. Today many insurers exclude liability coverage for certain breeds of dogs. But dogs are not the only pets that might cause a liability claim.<sup>4</sup> Thirty-six US states impose strict liability for dog bites, but at least four extend liability to other types of animals.<sup>5</sup>



## LEASING A PROPERTY

Renting your property to a tenant can create additional liability risks. What if the tenant or a guest of the tenant gets hurt on your property? Protect your investment and lower the risk of injury to others by making sure your rental properties are properly repaired and maintained. When tenants make repair requests, respond promptly. Inspect the property periodically for hazardous conditions, as your local laws allow, and warn tenants and visitors about any potential hazards you cannot fix immediately – such as by placing safety hazard tape around a broken floor tile in a common area.

## TEENAGE DRIVERS

Teenagers behind the wheel are known to be more distracted – by texting, chatting with passengers, or using any mobile device. Talk to your teen about these serious concerns and encourage them to take a driver training course, which could also help lower your insurance premium. In addition to automobiles, it's important to be aware of the risks associated with teenagers operating other vehicles, such as boats, personal watercraft, all-terrain vehicles, and golf carts. Some states require separate licenses or have minimum age restrictions to drive specialized vehicles. Educate yourself before allowing your teen or their friends to use any vehicles that you own.

## SHARING VEHICLES

If someone borrows or shares a vehicle you own, such as a nanny or other hired employee, you could be responsible for any damage or injuries they cause if they're involved in an accident while driving your vehicle. Allowing hired employees to use their personal vehicles, even if you reimburse them for miles driven, may not necessarily mitigate your liability exposure. If your employees are injured in the course of their work, workers compensation may be triggered, but third-party liability could still flow back to you for activities employees perform as part of their jobs.



# Liability Cases

Examples of actual claims and settlements illustrate that sudden and accidental events can lead to liability.<sup>6</sup>



## INTERNET DEFAMATION

A plaintiff brought an internet defamation suit against a woman for posting defamatory statements on an online bulletin board, where the defendant called the plaintiff a “crook” and a “fraud” and affected her professional reputation. Settlement: \$11.3 million.



## BOATING ACCIDENT

A 16-year-old girl injured in a boating accident required a leg amputation and removal of her gall bladder. She had been under the supervision of the adult defendant. Settlement: \$4.6 million.



## HORSEBACK RIDING ACCIDENT

An 11-year-old girl was kicked in the face by a privately owned horse at a stable. The stable owners were found responsible due to negligent supervision. Settlement: \$5.9 million.



## ATV ACCIDENT

A teenager was killed while riding an all-terrain vehicle on a neighbor’s property. The neighbor had invited the teen to drive the ATV without requiring proper safety equipment and without adult supervision. Settlement: \$20 million.



## AUTO ACCIDENT

A passenger in a car suffered multiple facial fractures and emotional distress in a head-on collision with the defendant’s vehicle. The defendant was found guilty of driving at an excessive speed, failing to keep a proper lookout and driving under the influence. Settlement: \$3.5 million.

# Managing Liability Exposures

With a multitude of potential sources of liability, individuals and families may struggle to know where to begin in managing their exposures. It is helpful to consult experts in law, risk management, and insurance to assess liability risks and the options for mitigating those risks. Some recommended steps are:

## Understand Your Risks

Every individual and family has a unique risk profile that is influenced by their lifestyle, assets and relationships. Questions that should be considered to uncover hidden liability exposures and better understand your risks include:

- Do you own multiple homes? Where are they?
- Are secondary homes rented out through home-sharing platforms?
- Do the homes have pools?
- Are there pets? What kinds of animals and how are they kept?
- Do you have domestic employees?
- Do you own watercraft?
- Are private aircraft used for personal or business travel?
- Do family members share vehicles or spend time at secondary residences?
- How active are you and your family members on social media?
- Do you participate in any non-profit organizations or publicly traded enterprises?
- What legal structures are used in asset ownership, e.g. trusts, limited-liability companies?
- Does your family have a foundation that supports certain causes? Have the foundation or its employees received negative attention relating to the foundation's operations?

Aligning expectations with risk appetites also is an important factor to consider. Some affluent individuals and families prefer to buy insurance, while others wish to pay for certain kinds of losses out of personal funds. Even if you prefer to retain property damage risk, having liability coverage is prudent because losses can be volatile.

Some excess liability policyholders may incorrectly assume all family members are covered regardless of where they reside. Such policies do not cover relatives who have established their own domiciles, though the policies generally make an exception for students at boarding schools or colleges while living outside the policyholder's home.

# Choose Appropriate Coverage

No one would intentionally overpay to underinsure their exposures, but that can happen if an individual or family does not have a clear understanding of those exposures and appropriate insurance in place. Types of policies to consider, depending on your exposures, include:



## PERSONAL EXCESS LIABILITY

A personal excess liability policy, often called a personal umbrella, is designed to protect against claims for personal injury, bodily injury or property damage. In addition to paying for settlements and judgments, excess liability policies also pay for legal defense costs. This form of coverage sits above primary policies on an individual's home, automobile, watercraft, and other assets and provides expansive protection against a potentially devastating financial loss.



## EMPLOYMENT PRACTICES LIABILITY

Claims by current or former employees alleging discrimination, wrongful discipline or termination, harassment, breach of contract or other charges can result in costly litigation. Employment Practices Liability Insurance (EPLI) is designed to respond to employment-related claims, which homeowners and excess liability policies generally exclude.



## COMMERCIAL AUTO

Private-passenger auto policies typically will not cover injury or damage arising out of business activities. Commercial auto insurance is intended for that risk and can provide protection in situations where, for example, domestic employees are using family-owned vehicles to perform their jobs.



## DIRECTORS AND OFFICERS LIABILITY

Serving as a director or officer can bring liability exposure, even for non-profit and charitable organizations. The entity may have documents that outline indemnification of directors and officers, as well as D&O liability insurance, but the amount might not align with an individual director or officer's risk tolerance. Over the past decade, numerous directors have faced personal liability in D&O lawsuits, with courts ordering them to pay awards out of personal assets. In such cases, specialized coverage for individual directors and officers, as well as excess D&O coverage, is available.



## WORKERS COMPENSATION

Employing even a small number of domestic staff can require individuals or families to provide workers compensation insurance, under state laws. This form of coverage provides statutory benefits for medical care as well as lost wages and death benefits.

Further, it is essential to ensure that all of your personal insurance policies work together as a seamless program. Most foundational policies – homeowners, auto, yacht, etc. – include some level of liability coverage, but it is often capped at amounts well under the average liability settlement. Policies providing additional liability coverage, such as those described above, could come into play if the loss is greater than those underlying policy limits. If those limits are not aligned, you could have costly gaps in coverage.

Determining what limits are right for an individual or a family depends on their unique circumstances. Your current net worth is a good place to start, but a jury or judge has no obligation to render a verdict you could afford to pay immediately. The court is able to attach potential earnings to settlements, which means that personal liability exposure puts both current assets and your financial future at risk.

A helpful tool to determine adequate limits is the Marsh Private Client Services [Liability Coverage Estimator](#). By answering a few brief questions, you can see recommended amounts of liability insurance and request a customized risk analysis.

# Take Steps to Prevent Losses

To maximize the value of your insurance coverage, you should take measures to mitigate your liability exposures. These measures include:

- Don't drink and drive.
- Put away phones while driving.
- Maintain your property. Fix broken steps and remove hazards such as dead tree limbs. Have an expert review your property for potential risks.
- Screen domestic employees. Conduct professional background checks for domestic employees and contractors, don't just rely on word of mouth. Establish written rules/guidelines to avoid misunderstandings.
- Be a cautious host. Observe and limit guests' alcohol consumption, or hire professional bartenders or servers to dispense drinks, and provide access to safe transportation home.
- Educate your teenagers and young adults. Help children understand the risks of distracted driving, social media concerns, what is considered bullying, etc. Keep the lines of communication open so they are comfortable talking to you about what they are doing and what they see online.
- Keep up with changes. Life for most people happens at a fast pace. Asset acquisition and disposition, family growth, and commitments to passion projects are just a few ways that your exposures can change. It's important to ensure that risk management strategies and insurance coverage are kept up to date with current exposures.



# Next Steps

Liability judgments and settlements continue to increase, and exposures are multiplying for wealthy individuals and families. To avoid the disruption and upset that litigation can cause, and to protect against tragic injuries, make liability risk management a priority. A good way to start is to partner with trusted experts for risk insights and advice, and to make risk management a continuous practice as circumstances change.

The personal risk advisors at Marsh Private Client Services understand the importance of mitigating liability risks and can help secure appropriate coverage to protect your unique lifestyle.

To learn more, please visit [marshpcs.com](https://marshpcs.com).



## REFERENCES

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- <sup>3</sup> “A Majority of Teens Have Experienced Some Form of Cyber Bullying,” Pew Research Center, September 27, 2018; <https://www.pewresearch.org/internet/2018/09/27/a-majority-of-teens-have-experienced-some-form-of-cyberbullying/>
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- <sup>5</sup> Animal Legal & Historical Center, Michigan State University, 2019; <https://www.animallaw.info/topic/table-dog-bite-strict-liability-statutes#:~:text=Most%20states%20limit%20strict%20liability,states%20only%20cover%20dog%20bites>
- <sup>6</sup> The information provided regarding liability verdicts was originally drawn from both third-party and online sources considered to be reliable, but Marsh Private Client Services has made no effort to independently verify any of the sources’ data. The liability verdict information should not be considered typical or predictive of outcomes in other cases or any indication regarding how any insurer would handle similar claims.

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