

Managing Catastrophic Liability Claims and Litigation

Observations of Experts in the Field



Presented by Cat Excess Liability



Purchasing catastrophic liability insurance is especially challenging in volatile economic times. To be properly protected at all times, a company needs a strong, tall tower of liability insurance, heavily weighted with capacity from an insurance organization that is willing and able to successfully defend complex claims and litigation.

Chartis is such an organization. For decades, our carriers have been bringing security and consistency to every level of the liability insurance tower, providing primary general liability, lead commercial umbrella/excess liability and, through Cat Excess Liability, catastrophic liability and financial lines coverage. Equally important is our vast network of claims resources, which has a proven track record of arming insureds with an effective and unified defense in potentially catastrophic liability claims and litigation.

The following roundtable discussion spotlights the challenges of managing catastrophic liability litigation and how infusing strong, consistent capacity throughout the insurance tower benefits policyholders in real-world litigation defense.

Participants include:

Andrew Barberis

Executive Vice President, P&C Severity Claims
Chartis

Neal Glazer

Partner
D'Amato & Lynch, LLC

Earl W. "Billy" Gunn

Partner
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC

How does carrying multiple layers of liability insurance from the same insurer benefit a policyholder in litigation?

Glazer: The involvement of a single insurer brings consistency to both claims evaluation and claims strategy. This consistency is enormously beneficial. It enables the insured to avoid new companies coming and going as a claim moves into excess layers, which can necessitate reinventing the wheel in calculating a claim's worth and renegotiating claims strategy time and again.

With one insurer involved, there are no handoffs and everybody keeps their eye on the ball ... claims personnel are purely focused on a favorable result.

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Gunn: One example of the problems that can arise without carrier consistency involves a healthcare product manufacturer that had multiple companies underwriting its liability coverage over six or seven years.

Each carrier had a different claims handling philosophy, so although the claims involved the same product and the same plaintiffs' lawyers, each wanted to pursue a different strategy for "their" claims. Each wanted its own panel counsel assigned to its claims. The current lead carrier did not want to use the mediator that had been involved in resolving approximately forty of the cases already. They wanted to bring onboard a new mediator, unfamiliar with the claims — a waste of time and money.

Every insured wants their claim resolved as efficiently and inexpensively as possible. Shifting gears midway does not accomplish this goal. In this case, the insured was left frustrated by a lack of global strategy and response.

Glazer: On the flip side is a claim involving a major explosion at an oil depot. Cat Excess Liability carriers had a lower layer excess policy and catastrophic liability layer on this risk. As a result, its claims representative was able to step into the litigation early and remain involved; leading tower participants towards expedited settlements going forward.

Barberis: In cases where you have multiple layers, you have the advantage of the same adjuster that is handling the first excess layer coming in at the catastrophic excess layer already knowing the players: the client, the general counsel, the experts, the mediator, and the plaintiffs' attorneys. They have met with them face to face in meetings and settlement discussions. These hard-earned relationships can pay dividends for the policyholder as claims reach into upper layers of coverage.

Glazer: Generally, the insurer that has put up the most limits in the liability insurance tower assumes a leadership role and directs claims handling. When that carrier sits in the lead and in excess layers, it can influence how the claims are handled both from the top down and the bottom up, which is typically conducive to success.

Barberis: When we have the lead in a tower and have other layers as well, we can take a "top-down" view, formulating a sound and consistent strategy to take ownership of the entire casualty problem.

Notably, we've seen underlying carriers all too willing to "spend coverage" and overpay, simply to shed their limits and reduce their expense burden. This is clearly a disservice to the client not only in that case but in remaining cases, since it can lead to an artificially inflated settlement that drives up the price of the other cases.

Glazer: There is always a threat that an excess insurer will allege that an underlying insurer is not settling claims properly and unnecessarily exposing an excess layer. Having the same insurer involved can avoid that situation.

Why should an insured purchase multiple layers from Chartis, including coverage through Cat Excess Liability?

Glazer: Longevity and continuity are enormous advantages. Chartis insurers have written liability insurance and catastrophic liability insurance for many years continuously. Because of the amount of coverage they write and claims they handle, they know the nation's major plaintiff firms, particularly those that handle mass tort cases, extremely well. These attorneys know them too. The lines of communication are established and open, which eases negotiations. Moreover, the plaintiffs are well aware that Cat Excess Liability claims personnel have handled "mega" cases many times in the past.

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Gunn: Absolutely. In the high-stakes litigation world, there are certain plaintiffs' attorneys in different states who are "the guy." These guys know Chartis; they respect it, and take its claims adjusters and litigation strategy seriously.

Chartis's sophisticated claims handling personnel have the experience to recognize and zero-in immediately on a potentially severe exposure. In one case, Chartis did not attach until excess of \$10 million dollars. The carrier that provided the underlying coverage, which attached at \$3 million and provided limits to \$10 million, insisted that "their guy" was "the guy" to try the case. The carrier's counsel specifically requested Chartis not attend the mediation, fearing that would send a message that the underlying carrier was ready to spend \$10 million dollars. Then, at the mediation, just six weeks before trial, that carrier offered its \$10 million and abandoned the defense. The process was very detrimental to the insured.

Barberis: An approach like this is just punting on the claim, not only on limits, but on participation ... on everything that they should be bringing to the table. And it slows litigation since new counsel and experts have to be brought up to speed.

Gunn: The Chartis insurers are better than any I have worked with at creatively resolving claims. Some insurers would prefer to spend \$25,000 and settle for \$1,000,000 rather than spend \$400,000 and settle for \$500,000. However, at the end of the day when you add it all up, investing \$400,000 in a smart defense strategy ultimately saves money. Chartis is a big believer in looking at the total payout: both defense costs and settlement.

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Glazer: The Chartis insurers have a reputation of making sure that cases that ought to be settled are settled for a fair amount.

Gunn: In my 20 years working on cases with them, I'd say at least half the time cases settle during trial largely because it is a known fact that Chartis will see its cases through to trial rather than settle for an unreasonable amount. Because of this reputation, plaintiffs will usually lower their demand on the courthouse steps. They know Chartis is not going to get nervous and pay the plaintiff's asking amount just to avoid trial.

I remember one particular case that was tendered late in the game. The plaintiffs were seeking exorbitant amounts in damages, and everybody assumed the case would settle for very large amounts. It involved a horrible tragedy of a high school valedictorian who suffered severe brain damage in an auto accident the day after graduation. Her boyfriend was killed and a third person injured. The defendant was

a garbage truck company. Chartis got involved late in the claim after discovery was closed. Nonetheless, we hired an expert for \$98,000, even though we were uncertain whether his testimony would ultimately be admitted at trial. We were able to use his opinion to settle all three of the claims for under \$2 million, using the money to create a special needs trust that improved everybody's life. Chartis' decision to hire this particular expert and willingness to pay him turned the outcome of the case.

Barberis: We pride ourselves in presenting a highly sophisticated and reasonable approach to protecting our clients' interests, from first dollar to last dollar.

Having a Chartis insurer both as a lead and higher in the tower through Cat Excess Liability allows the insured to tap into our more than 200 in-house specialists who focus specifically on catastrophic casualty cases on a day-to-day basis. That is all they do, as opposed to excess carriers with *de minimis* claims staffs, both in numbers and experience.

When you buy coverage from us, you buy the total relationship our claims staff has with mediators, experts, and the very best trial counsel in America.

What do you say to risk managers who think they may not need catastrophic liability coverage?

Gunn: Catastrophic claims comprise a small part of the claims universe, but they do happen. Many times companies look at their loss history and see that they do not have many claims or do not have large claims. That can change overnight. I do not think that the healthcare product manufacturer we mentioned earlier ever had a case worth even half a million dollars in its 120 year history. Suddenly, the manufacturer faced well over 100 claims, some of which claimants' counsel suggested were worth millions. What started as a few cases trickling in turned into a potential avalanche.

Glazer: They call it catastrophic liability insurance for a reason. It only takes one catastrophe to end a company.

Barberis: The price of catastrophic claims does not go down on a macro basis. The top 10 may vary from year to year, but the price of catastrophic claims, is going nowhere but up. Plaintiffs are mobilized and very effective. Every corporation is a potential defendant.

Gunn: A good example of the need for a large amount of coverage is another one of my clients, a medical device manufacturer that undertook a product line recall. At first the company had just a few claims, each worth approximately \$50,000 to \$80,000, not too significant, but momentum was building. By the time the primary layer exhausted and the claims were turned over to the Chartis insurers, there were 730 lawsuits. The company was not going to handle these claims the way they were handled in the past, where every claimant essentially got a check. Some of the cases went to trial, which established the real value of the claims. You need an insurer that is willing and able to try some cases, and you need to be able to withstand the verdicts if that is what it takes to ultimately mitigate the loss.

Barberis: No one is immune to catastrophic liability. We've cited examples from product manufacturers and oil and energy risks, but the issues are equally applicable to all industries, from transportation to food manufacturing.

Gunn: A sugar refinery might think, "How badly can we hurt anybody, we make sugar?"

Glazer: Until it explodes. The owners of the oil depot certainly did not expect a facility that had been there for years to suddenly blow up.

Barberis: And they may find out that their near-billion-dollar tower of liability coverage isn't close to enough.

Those Who Have Been There

What Policyholders of Chartis Say:

I have recently had a first hand experience of the exceptional professional and dedicated services provided by Chartis and its claims handling team. The case involved a personal injury case and the stakes were very high. It was clear that to resolve the case and avoid a jury trial, a settlement would reach Chartis' umbrella layer. It was in all parties' interest to see the case resolved. It took two long days of mediation and frankly the process seemed to be failing until the adjuster creatively and at his initiative, came up with a solution to find a compromise between the parties. It was this display of commitment and expertise that reinforced my sense that Chartis was truly a partner in my company's corner, looking after our interests and not merely an insurance products supplier. Chartis puts its money on the line. That's what builds and cements relationships. Thanks Chartis, great job!

The Jim Pattison Group
Nick Desmarais, Managing Director, Legal Services

As General Counsel for Transportation Claims, Inc., the claims and litigation handling division of Crete Carrier Corporation, I spent the better part of the last three years dealing with the results of a January 25, 2006, Lake Butler, Florida accident involving several deaths and multiple serious injuries.

Neither I, nor anyone at Crete, had ever been confronted with a case like this where so many things came together at once. The effect was somewhat overwhelming...

From the beginning, it was clear that Chartis had experience in handling these types of cases and that experience helped put the case in perspective, and point the claims handling process in a direction, which eventually proved to be correct. Chartis retained counsel with a history of being involved in high-profile cases which, together with Chartis' input, eventually gave us a sense that, while it would be painful, we would survive the process... Through it all Chartis kept me informed of the status of the negotiations and settlements, and, in the end, as evidenced by the settlement amounts, was right in their approach...

Transportation Claims, Inc.
David L. Brown, General Counsel



The purpose of this letter is to explain to you just how pleased I am, not only with the results obtained by the defense team Chartis provided, but also by their professionalism and the high standard of work ethic they exhibited throughout this ordeal. These individuals make your company look really good, which unfortunately today is NOT the standard in the industry..

The...lawsuit, involved huge amounts of paperwork, large numbers of parties and attorneys with varying degrees of understanding of the underlying issues...The litigation plan put together and executed by Chartis' team...however, was clearly thought out, and beautifully executed. Their common sense approach to the hysteria exhibited by the other players was a breath of fresh air. They did an excellent job of paring the suit down to size...and settling or otherwise resolving as many of the side issues as possible early on in the litigation... Lex claims working on this approval.

Xslent Technologies, LLC
Martin Lettunich, Chairman and Chief Executive Officer

The Chartis trial team was outstanding...The attorney ran circles around opposing counsel with his technical knowledge of the... product and approached and finished the case with a passion combined with a professionalism that was admirable. We have so enjoyed working with this attorney and appreciated his unyielding and strong effort... The Chartis team further encouraged the insured's active involvement in this case which we appreciated. We acted together as a well designed machine!

Segway, Inc.
Jane H. Davison, Esquire

Building Your Liability Insurance Tower

How much is enough?

Every buyer should ask – can a catastrophic loss happen to my company? Chances are the answer is yes. And a carefully crafted and appropriately high tower of excess liability insurance remains the most effective way for companies to shield their assets and their shareholders against the potentially catastrophic financial impact of U.S. civil liability lawsuits.

The insurance purchase itself can be risky business; insurers that have the expertise and financial strength to underwrite complex liability exposures consistently, year-to-year, are rare. There is also concern over what level of coverage is enough.

So how much liability coverage is enough? The decision is more art than science. Requisite limits vary widely depending on a company's circumstances. However, it is generally safe to say that even the most benign operations should purchase primary liability insurance, plus substantial excess limits. Companies with seemingly low levels of liability risk should consider excess coverage and the most exposed industries should consider purchasing the highest level of excess coverage available. Manufacturers that produce products – such as food or toys – with the potential to impact a large number of people and give rise to a class action or mass action lawsuits are classic examples of companies that could experience a catastrophic loss.

The Benefits of Coverage with Chartis Insurers:

As carriers specializing in global excess commercial insurance, the Chartis insurers are exceptionally qualified to respond to liability claims of any size. We also provide expertise in loss prevention prior to and claims management after a loss has occurred. The result is our longevity in the insurance market and the premium stability and underwriting consistency enjoyed by our customers.

Chartis brings unrivaled capacity to the insurance industry, and experience that enables us to be innovative and proactive in claims management.

In 2008, Chartis' U.S. domiciled commercial insurance companies paid a total of \$17.7 billion to resolve claims for policyholders. Our claims operation spans nearly 3,500 claims, service, and administrative personnel worldwide – nearly 1,000 of these dedicated solely to high severity or specialty claims.

Our claims divisions have specific expertise in primary and excess property and casualty as well as specialty areas such as financial lines, environmental, workers' compensation, toxic tort, healthcare, oil and energy claims. Our claims professionals are encouraged to be creative in their solutions, utilizing diverse resources on each and every claim through an extensive panel of specialized experts and a network of structured settlement brokers. Our professionals are also ready and available to participate in pre-loss meetings with insureds to share their expertise and support loss prevention efforts.

Chartis utilizes state-of-the-art programs, such as *CrisisResponse*®, which is specifically designed to provide our insureds with funds and professional expertise to respond effectively to a serious liability incident and mitigate ultimate damages.

Claims information is readily accessible to our insureds through IntelliRisk®, which supports claims reporting, review of claims details, and facilitates communication between claims personnel, brokers and underwriters.

Broad swaths of liability continue to emerge in unprecedented and unforeseen areas. As the challenges confronting those in the business of assessing and managing risk continue to mount, diligent safety and loss control efforts are critical. Equally vital is sound excess liability insurance from a proven insurer...one capable of addressing and defending against emerging liability issues today and those that will arise, unexpectedly but inevitably, tomorrow.

Biographies:

NEAL GLAZER

Partner, D'Amato & Lynch, LLC.

Neal Glazer is a partner in D'Amato & Lynch, specializing in casualty and professional liability insurance and reinsurance coverage counseling, litigation and arbitration. He represents domestic insurers as well as carriers located in Bermuda, England and other international companies and Lloyd's Syndicates. For over 32 years, Mr. Glazer has litigated and arbitrated major coverage disputes involving general liability, environmental, toxic tort, professional liability and bad faith issues.

He also has helped develop and draft hundreds of policies, endorsements and ART contracts, including the Bermuda IO-02 and Follow Form policies; pollution and asbestos abatement policies; and insurance company professional liability and other errors and omissions policies for industry leaders in these lines. He frequently speaks at insurance industry conferences and in-house seminars on coverage issues and product development.

Mr. Glazer obtained his B.A. from State University of New York at Stony Brook, and his J.D. from Fordham University School of Law.

EARL W. "BILLY" GUNN

Partner, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC

As a partner in Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, Mr. Gunn focuses his practice on product liability, medical malpractice, medical device, transportation and catastrophic injury cases.

Mr. Gunn serves as trial counsel for major manufacturers, hospital companies, medical device manufacturers, transportation companies and excess insurers and has tried approximately 200 cases in 15 states. Mr. Gunn was named Georgia "Super Lawyer" by *Super Lawyers* and *Atlanta* magazine for 2004, 2005, 2006, 2007 and 2008 in the category of Civil Litigation Defense and is admitted to practice in the State Bar of Georgia, the U.S. District Court, Northern and Middle Districts of Georgia and the U.S. Court of Appeals, Eleventh Circuit.

Mr. Gunn obtained his undergraduate degree from the University of Georgia (1976) and his J.D. from the University of Georgia School of Law (1979).

ANDREW BARBERIS

Executive Vice President, P&C Severity Claims

Andrew Barberis is responsible for managing the Excess Casualty, Excess Specialty and Excess Complex claims units in addition to the Products and Single Event (PASE) and Mass Tort claims departments of Chartis. He joined the organization in 1996 as a Complex Claims Director. He was previously an attorney with the New York law firm Hayes and Ryan, where he practiced in the areas of insurance and personal injury litigation.

Andrew has more than 20 years of experience in insurance and law. He graduated from St. John's School of Law and was admitted to the New York State bar in 1993.

Cat Excess Liability a division of Chartis, is a leading provider of world-wide catastrophic excess casualty and financial lines solutions.

For more information on catastrophic protection, please contact us at CatExcess@ChartisInsurance.com.



Chartis is a world leading property-casualty and general insurance organization serving more than 40 million customers through one of the industry's most extensive on-the-ground global networks. With a 90-year history, more than 500 products and services, deep claims expertise and excellent financial strength, Chartis enables its commercial and personal insurance customers alike to manage virtually any risk.

Chartis is the marketing name for the worldwide property-casualty and general insurance operations of Chartis Inc. All products are written by insurance company subsidiaries or affiliates of Chartis Inc. For additional information, please visit our website at www.chartisinsurance.com. Coverage may not be available in all jurisdictions and is subject to actual policy language. Non-insurance products and services may be provided by independent third parties. Certain coverage may be provided by a surplus lines insurer. Surplus lines insurers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.