

"Can Your Customers Weather the Storm?": Understanding the Personal Umbrella Policy



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Umbrella Claims Examples

- ▶ Babysitter left baby unattended in a walker – baby toppled the walker, hit her head and suffered brain damage – babysitter and her parents sued – court awarded \$11,000,000
- ▶ Insured's daughter made disparaging remarks about her teacher – teacher sued for personal injury – \$750,000 paid
- ▶ Insured's son driving the insured's vehicle with girlfriend as a passenger – accident occurred and the girlfriend hospitalized for over a month with multiple fractures and internal injuries – now walks with a drop foot – \$1,000,000 umbrella limit paid
- ▶ Insured's friend dove into an above-ground pool, struck his head and became a quadriplegic – sued the homeowner and the pool manufacturer – homeowner 60% responsible/manufacture 40% responsible – court awarded \$10,000,000

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Umbrella Claims Examples

- ▶ Insured's tenant became ill because of carbon monoxide leaking from a faulty furnace – suffered permanent brain damage and demanded \$750,000
- ▶ Teenager sued her softball coach because his "incorrect teaching style" ruined her chances for an athletic scholarship – she demanded \$750,000
- ▶ Insured's hillside covered with concrete to prevent erosion – concrete installed prior to the home purchase – 5 feet of the concrete fell and hit a neighbor's home, knocking it off the foundation – claim settled for \$950,000

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Umbrella Claims Examples

- ▶ Insured permitted her children and their friends to play paintball in the backyard – a participant removed her headgear to better hear someone calling her name – she was hit in the eye – resulted in a \$575,000 settlement
- ▶ Insured hosted a beach party for their daughter – one of the attendees found a propane tank that appeared to be empty and threw it in the fire – it exploded and injured several guests – the insured was sued for \$20,000,000 for failure to supervise the party

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Why Purchase an Umbrella?

- ▶ Provides excess liability coverage for losses covered by underlying policies
 - Catastrophic protection
 - Asset protection
 - Litigious society – need defense coverage for claims in excess of the primary policy limit
- ▶ May provide broader coverage than underlying policies
 - May fill coverage gaps
 - May broaden coverage territory to worldwide
 - May broaden definitions – e.g. “personal injury”

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Qualifying a Client for an Umbrella

- ▶ Identify exposures – assets, earning potential, activities, high-profile identity, contractual obligations
- ▶ Review primary policies – review limits and gaps
- ▶ Determine other needs – peace of mind, no longer just for the wealthy, litigious society
- ▶ Address the cost of coverage – coverage is very affordable – identify factors that may affect the price

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Food for Thought

- ▶ Do we always offer a \$1 million limit?
- ▶ What if the insured is sued for more?
- ▶ Is the cost of a higher limit prohibitively expensive?
- ▶ Because most umbrella losses happen in the first \$1,000,000 limit, higher limits have a lower rate

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Pricing Example

- ▶ Premium for \$1 million limit = \$350
- ▶ Premium for \$2 million limit = \$462 (less than 30% increase)
- ▶ Premium for \$3 million limit = \$559 (less than 60% increase)
- ▶ Premium for \$4 million limit = \$609 (less than 75% increase)
- ▶ Premium for \$5 million limit = \$639 (less than 85% increase)

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Pricing Example

- ▶ Suggestion – always offer several limit options including the highest limit available –let your customer decide
- ▶ Offer options rather than recommendations
- ▶ Ask
 - “What limit do you feel comfortable with?”
 - “What can you afford?”
- ▶ Most carriers offer up to \$5,000,000 limits; some offer up to \$10,000,000
- ▶ High net worth clients might need more than \$10,000,000

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Types of Umbrella/Excess Policies

- ▶ What types of policies do your carriers offer?
- ▶ True umbrella
 - Provides excess coverage over underlying policies
 - Can provide primary coverage in areas not covered by the underlying policies
 - Stand-alone policy – has its own insuring agreement, definitions, provisions, etc.
 - Will provide defense if not covered by underlying policies
 - Might share in the defense with the underlying carrier

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Types of Umbrella/Excess Policies

- ▶ Following Form
 - Provides excess coverage only
 - Generally the same insuring agreement, definitions, provisions, etc. as the underlying policies
 - May not provide additional defense

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Types of Umbrella/Excess Policies

- ▶ Combination (hybrid) – combines excess coverage with some broader coverage in some areas
 - True umbrella for some exposures
 - Following form for some exposures – typically autos, watercraft, recreational vehicles

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Benefits of Selling Umbrella Coverage

- ▶ Added liability protection
- ▶ Account rounding = account retention
- ▶ Reduces E&O exposure
- ▶ Affordability makes it easy to sell
- ▶ Low claim frequency
- ▶ Increased revenue
- ▶ Always sell underlying limits that would qualify the insured for an umbrella

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Declarations Page

- ▶ The declarations page personalizes the policy
 - Policy period
 - Named insured
 - Policy limits – occurrence and aggregate
 - Self-insured retention (if it doesn't have one it's probably an excess policy)
 - Underlying requirements and limits

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“Underlying” Coverage Requirements

- ▶ Underlying policies – primary policies must be listed (auto, homeowners, watercraft, recreational vehicle, etc.)
- ▶ Underlying limits – minimum underlying limits are required
- ▶ Underlying carrier
 - Financial stability is important
 - Some write stand-alone policies – some require all the underlying policies
 - Won't “drop down” if the underlying insurer becomes insolvent

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Maintenance of Underlying Insurance

- ▶ Very important provision
- ▶ Review the policy conditions – does the requirement apply to all family members?
- ▶ Most umbrellas require coverage to be in place when the occurrence takes place
- ▶ Failure to maintain required limits will force the insured to pay the difference

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Maintenance of Underlying Insurance

- ▶ Some contracts require the company to be notified if the limits are not maintained
- ▶ Concurrency of underlying and umbrella policies is a concern

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Failure to Maintain Required Underlying Insurance

- ▶ The insured has a \$1million umbrella policy requiring \$500,000 underlying auto limits
- ▶ The auto coverage is moved to another company, which writes a \$300,000 limit
- ▶ The insured is involved in an accident and is sued for \$1,000,000

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Failure to Maintain Required Underlying Insurance

- ▶ The underlying carrier will pay \$300,000
- ▶ The insured will pay \$200,000
- ▶ The umbrella carrier will pay \$500,000
- ▶ Carrying inadequate underlying limits creates a gap in coverage
- ▶ Thought: Who is responsible for the inadequate limit – the umbrella agent or the auto agent?

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Example of Non-Concurrence

- ▶ An auto policy is written with a \$500,000 limit on January 1, 2021
- ▶ The umbrella policy is written “mid-term” with an effective date of March 1, 2021 and a \$500,000 underlying auto requirement
- ▶ The insured receives a bodily injury claim for \$1,000,00 on April 1st for an accident that happened on February 28th
- ▶ Since the umbrella was not in force on the date of the accident, the insured has no coverage under the umbrella
- ▶ The auto carrier will pay \$500,000 and the insured will pay \$500,000

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Self-Insured Retention

- ▶ Definition – the amount the insured will pay for a loss not covered by the underlying policy but covered by the umbrella
- ▶ The insured must pay the SIR before the policy will make a payment
- ▶ No self-insured retention in “following form” policies
- ▶ Usually \$250, \$500 or \$1,000
- ▶ Purpose is to eliminate small claims
- ▶ Might be referred to as a deductible

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SIR Example

- ▶ The insured has a true umbrella with a limit of \$1,000,000 and a self-insured retention of \$500
- ▶ The homeowners limit is \$300,000, which meets the underlying requirement
- ▶ The insured is sued for \$1,000,000 by a teacher for disparaging comments he made about the teacher at a PTA meeting
- ▶ The homeowners policy does not have personal injury coverage but the umbrella does have it

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SIR Example

- ▶ The homeowners carrier pays \$0
- ▶ The insured pays the \$500 self-insured retention
- ▶ The umbrella carrier pays \$999,500 because it provides broader coverage than the homeowners policy

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Key Definitions

- ▶ “Personal injury”
 - Most policies define “bodily injury” and “personal injury” separately
 - Some policies broaden “personal injury” to include “bodily injury”
 - Many umbrellas include named “personal injury” offenses in the definition of “bodily injury”

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Key Definitions

- ▶ “Personal injury”
 - Policy exclusions can affect the interpretation of the definition of “personal injury” – e.g. intentional injury exclusions
 - The umbrella may be broader by covering offenses like shock, mental anguish, or humiliation, which are not in the H.O. Personal Injury Endorsement

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Key Definitions

- ▶ “Insured” (aka “covered person”)
 - Named insured
 - Resident spouse
 - Resident family members
 - Others stipulated in the definition – e.g. vicarious liability of others for the insured’s actions

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Policy Provisions

- ▶ Umbrella/excess policies are non-standard forms – analysis of policies is very important
- ▶ Insuring agreement – pays damages in excess of the retained limit (either the underlying limit or the self-insured retention)

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Policy Provisions – Indemnify vs. Pay on Insured's Behalf

- ▶ Indemnify
 - Insurer is not obligated to provide payment for damages until the insured is legally obligated to pay
 - Insured must pay defense and supplementary payments until liability is determined
 - Once liability is determined, the insurer will reimburse the insured for the defense expenses
 - Most "indemnify" agreements do not require the insured to pay damages but only be obligated for them

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Policy Provisions – Indemnify vs. Pay on Insured's Behalf

- ▶ "Pay on behalf of" – the company will pay for ongoing expenses, supplementary payments, and damages owed as they occur or become payable

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Defense

- ▶ Underlying carrier provides the defense if the loss is covered by the underlying policy
- ▶ Umbrella carrier conducts the defense if the loss is not covered by the underlying policy but covered by the umbrella or the limits of the underlying policy are exhausted

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Are Defense Costs Paid in Addition to the Limit?

- ▶ Defense costs are paid within the limit unless there is a statement that they are paid in addition to the limit
- ▶ Most policies pay defense in addition to the limit
- ▶ Many will pay defense and legal costs if there is no underlying coverage
- ▶ If there is primary coverage, the umbrella carrier can elect to participate in the defense
- ▶ Some policies may have defense as part of the limit – i.e. defense costs are considered “damages”

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Common Exclusions

- ▶ Workers compensation obligations
- ▶ Damage to property owned by the “insured”
- ▶ Damage to property in the care, custody or control of the “insured”
 - May or may not give back some coverage
 - The exclusion may apply only to the extent the insured must provide insurance or to the extent the insured is legally responsible
- ▶ Intentional “personal injury” or “intentional property damage” – may provide “self-defense” coverage (use of reasonable force to protect persons or property)

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Common Exclusions

- ▶ Aircraft liability
- ▶ Professional services – E&O, D&O, malpractice, etc.
- ▶ Business
 - Usually “following form”
 - May provide coverage for activities incidental to business – e.g. playing golf with a client

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Common Exclusions

- ▶ Watercraft
 - Usually “following form”
 - Some coverage may be given by increasing length or horsepower limitations or excluding coverage only for owned watercraft

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Common Exclusions

- ▶ Activities of Insureds as Directors and Officers
 - May give back coverage for participation on a non-profit board
 - CAUTION: this is not D&O coverage – the policy covers bodily injury, property damage and personal injury, not “acts and decisions” of a board
 - Insured may have a personal liability exposure
 - Insured should make sure there is D&O policy

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Common Exclusions

- ▶ War, civil war, insurrection, rebellion or usurped power
- ▶ Nuclear and radioactive exposures
- ▶ Discrimination, contagious or communicable disease, sexual molestation

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Common Exclusions

- ▶ Insured vs. insured suits
- ▶ Uninsured motorists – some insurers will add coverage – some states require that it be offered
- ▶ Pollution
 - The typical personal auto policy does not have a pollution exclusion
 - This might be narrower coverage than the underlying

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Underwriting Concerns

- ▶ Recreational vehicles, especially if there are children
- ▶ Insureds with accidents/violations
- ▶ High powered speed boats
- ▶ High powered autos
- ▶ Attractive nuisances – swimming pool, trampoline, playground equipment

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Exposures that may be unacceptable

- ▶ Prior umbrella losses
- ▶ Entertainers, professional athletes
- ▶ Public officials
- ▶ People who are well-known or famous
- ▶ Person who has been sued for libel or slander
- ▶ Newspaper/TV reporters, editors or publishers
- ▶ Multiple small liability losses
- ▶ Persons with major violations such as DUI's
- ▶ Persons with felony convictions

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Exposures that may be unacceptable

- Persons with custody of wild animals
- Owners of certain dog breeds – e.g. Staffordshires, Akitas, Pit Bulls, Dobermans, Rottweilers, Chows, Wolf Hybrids
- Persons who own aggressive dogs
- Persons who have had a dog bite claim
- Persons who do not meet the underlying policy underwriting guidelines

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Key Items to Remember

- Umbrella/excess policies are not standard
- Umbrella/excess policies provide excess limits and may provide broader coverage
- Umbrella/excess policies do not cover every possible liability exposure
- Policies may be umbrella, following form or a hybrid
- The insured must carry specified underlying limits

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Key Items to Remember

- Policies may “indemnify” the insured or “pay on behalf of” the insured
- The self-insured retention (retained limit) is the amount the insured must pay when the umbrella policy is broader than the underlying policy
- Defense costs may be paid in addition to the limit or within the limit

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