



## Personal Umbrella

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Although the Insurance Services Office Inc. introduced a standard personal umbrella policy in 1998, you will most likely find that the umbrella policies offered by your insurers significantly differ from each other. Consequently, each insurer's policy must be read and studied for its content to determine the extent of coverage provided.

A personal umbrella policy is intended to cover nonbusiness liability exposures of an insured. Limits generally range from a minimum of \$1 million up to \$10 million.

Some incidental business exposures may be contemplated in a particular insurer's policy, but generally it can be expected that business exposures require coverage under commercial liability forms.

**Underlying policies**  
Personal umbrella policies are built around the underlying policies prescribed by each insurer. This writer has never seen a policy that did not require at least an underlying policy for automobile liability, personal liability and watercraft liability. Most often, an underlying policy also is mandatory for recreational liability. And depending on the coverage provided, there may be a requirement for aircraft liability, professional liability and uninsured/underinsured motorists coverage.

The limits required for these underlying policies will vary from insurer to insurer. Many insurers will demand that coverage for some or all underlying policies be written with the same insurer writing the umbrella. Besides controlling the coverages being offered, this requirement makes verification of continued maintenance of underlying policies more accessible and, when a claim arises, it achieves coordination of defense strategies among policies.

**Excess coverage**  
Coverage under the umbrella can be expected (but not assumed) to provide excess limits over that provided by underlying policies. We say an umbrella policy *follows form* when its coverage applies according to the same terms of the underlying policies. On the other hand, an umbrella policy may provide excess coverage under its own terms, which may be broader or narrower than coverage provided by the underlying policies.

**Extended coverage**  
The real test of an umbrella is the protection which has been broadened beyond underlying coverage. Consider an umbrella that covers legal liability for property in the care, custody and control of an insured, surpassing the perils of fire, smoke and explosion provided in the ISO

homeowners policy. Entertain the thought of an umbrella that covers personal injury far beyond the concept of bodily injury—to include the so-called intentional torts of libel, slander, invasion of privacy, assault and battery, discrimination, etc. Or think of a policy that covers automobile liability anywhere in the world, not subject to the usual territorial definition found in most personal auto policies.

It is important here to stress the subordination of price when comparing and presenting umbrella policies. Since coverage and required underlying limits can vary so significantly, a comparison of price will not readily translate to value. The true value of any individual policy must reflect the extent to which expanded coverage benefits the insured.

**Key provisions**  
When analyzing the coverage of a particular personal umbrella, it helps to identify certain key provisions.

**Defense.** The amount of limits available will be greatly affected by the treatment of defense costs. If defense is *inside* the limits, the declared limits will be used up by any defense costs. Whereas, if defense is *outside* the limits, these costs will be in addition to the declared limits. A good place to look for this provision is under a policy's definition of *ultimate net loss* or some other provision identified as defense or supplementary payments.

**Territory.** Some policies will state a specific territorial boundary. Others may simply designate the world as the covered territory. And, if left undefined, it can be assumed that coverage extends anywhere in the universe!

**Property damage.** The policy may state that coverage applies to *tangible* property. If no reference is made to *tangible* property, then coverage for *intangible* property may be assumed. This means that intangible property, such as good will, would be covered damages.

The loss of use of injured or damaged property customarily is included in the scope of property damage. Some provisions also may cover loss of use when the property has not been physically damaged, such as when the property has been stolen.

**Personal injury.** A definition of personal injury or personal liability will indicate how far beyond bodily injury the policy will respond to personal injuries. A list of exposures usually are identified. This list varies from just the basic exposures found in the ISO homeowner's HO 24 82 endorsement to more extensive exposures, such as shock, mental anguish, assault and battery (where necessary to protect life and/or property), humiliation, discrimination, etc. Sometimes the list is rendered merely as an example of potential exposures without intending to limit the scope of injuries covered.

**Insured.** The *who* of coverage under a personal umbrella is answered by the definition of the "insured." The named insured and resident relatives can expect coverage, as well as other dependent residents in the household who sometimes are designated by age. In addition, those permitted use of automobiles, watercraft and recreational vehicles may obtain protection under nonexcluded circumstances. Look for a coverage extension to persons having custody of an

insured's animals. You often will find, too, that coverage is afforded persons legally liable for actions of persons otherwise insured.

### **Exclusions**

The broad sweeping coverage initially offered by the insuring agreement of a personal umbrella policy necessarily must be tempered by the other provisions of the policy. Exclusions carve out unintended coverage. But an interesting characteristic of exclusions is that they often become the determinant of designated coverages. Observe that exceptions frequently are found in exclusions. And when exceptions are made to exclusions (double negative), the result is a coverage (positive). Consequently, much coverage can be found in the exclusions section of the policy. While all exclusions command importance, some common ones are highlighted here.

**Business pursuits.** Will coverage follow form with underlying policies that provide some incidental business coverage?

**Intentional acts.** Coverage can be granted for self defense, protection of life and/or property or halting the dangerous operation of various means of transportation.

**Directors and officers liability.** Though this exposure seldom is excluded, the business exclusion and the definition of damages will limit its scope.

**Care, custody and control.** Where is the line drawn here? Sometimes aircraft or watercraft is eliminated. Another variation is to extract coverage for liability assumed in a contract.

**Watercraft, motorcycles and recreational vehicles.** What is covered beyond the underlying policies?

**Transmission of diseases, negligent entrustment, vicarious liability for children, intra-family suits, pollution and fellow-employee suits.** These all are potential exclusions reflecting modern legal and social trends.

### **Target**

### **market**

Is the client with \$1 million worth of assets the only market for this protection? Without a doubt, the wealthy client readily sees what is at stake in the event of cataclysmic losses. Nevertheless, it is a client's orientation toward *security* that is the primary factor in the sale of personal umbrella policies, with or without an abundance of assets.

Whether you are meeting a specifically identified need or just calming the nerves, the personal umbrella policy can keep your client "singing in the rain"! 11/08

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