

EXCESS AND UMBRELLA LIABILITY INSURANCE POLICIES

The umbrella liability and/or the excess liability policies are important elements of any company's insurance program. They provide the source of protection for catastrophic liability losses by establishing relatively high limits of insurance over and above the commercial general liability and automobile liability policies. These are commonly referred to as primary policies.

While umbrella and excess policies are a bit different, both are designed to increase the limits over and above the primary policies. If a company determines it needs higher limits than for example \$1 million per occurrence and \$2 million aggregate under their CGL policy, they should request their insurance broker to go the excess insurance market to obtain additional protection. The umbrella and excess policies can provide as little as double the limits of the underlying policies. The limits can also be raised as high as the broker and insured may agree on is reasonable given the risk of catastrophe and the additional premium costs for the added coverage.

Umbrella and excess liability coverage do not respond to a claim or loss until the amount of either a single loss exceeds or exhausts the limits of the primary policy. Umbrella and excess liability coverage will also respond at such time that the aggregate limits are exhausted. Let's look at an example.

CASE BREAK

A loss exceeds the existing primary policy limits of \$500,000 per occurrence. An excess or umbrella policy is written for \$2 million excess of the primary policy. The primary policy would pay all losses within \$500,000 and the excess policy would pay losses in excess of the primary coverage, up to the excess policy limit of \$2 million.

Let's now assume this primary policy also has a \$1,000,000 per aggregate limit. Claims totaling \$1 million are paid by the primary policy insurer. The excess or umbrella policy would then apply to any additional losses within that same policy period up to the excess policy limit of \$2 million.

Thus far, we have discussed how umbrella and excess policies are similar. Now we will talk specifically how these type policies differ.

Excess insurance provides coverage in excess of the limits on the underlying insurance policy. Excess coverage may be provided by either a Stand-alone Excess Policy or more commonly on a Following Form basis. A stand-alone policy relies exclusively on its own policy terms, conditions and exclusions. A following form policy on the other hand means that the language of the underlying or primary policy is, in effect, incorporated and the excess carrier assumes the same risks unless specifically excluded. It could very well be that the excess insurance company is the same company as who issues the primary policy. The excess policy will also specify the dollar limits on the excess insurer's liability. It is possible to obtain multiple layers of excess coverage with different excess carriers to achieve the total dollar level of coverage desired.

A typical follow form provision reads:

Except to the extent the insuring agreements, terms, definitions, conditions and exclusions of this policy differ, the coverage provided by this policy shall follow the insuring agreements, definitions, conditions and exclusions of the first underlying insurance policy as shown on the schedule of underlying policies.

Umbrella insurance as compared to excess insurance provides considerably broader coverage. As does excess insurance, an umbrella policy provides excess over existing liability policy limits for all primary policies. Additionally an umbrella policy may in addition insure existing gaps in coverage under the underlying policies for certain risks specifically excluded by the underlying policies. This coverage would exist over any self-insured retention amount stipulated in the umbrella policy, which are typical for umbrella policies.

Unlike general liability insurance, umbrella and excess liability coverages are not written under standard Insurance Services Offices ("ISO") forms. While ISO umbrella liability coverage forms do exist, they are not the industry norm. Accordingly because of the lack of industry standardization, careful analysis of umbrella and excess liability policies is necessary in order to determine whether the coverages meet the need of a particular company.