

Umbrella Policy Endorsements: Do They Say What They Mean and Mean What They Say?

by Marilyn L. Schulz

Primary liability policies are written using ISO-drafted endorsements. Most insurance companies use these endorsements, and consequently these endorsements are frequently tested in court and already have an established history of interpretations and rulings. The endorsements have been modified through the years, and the reasons for these modifications have been documented and are available to the public.

Umbrella-policy endorsements, on the other hand, are designed to modify the individual policy terms and conditions on a risk-by-risk basis. Each insurance company drafts its own endorsements for each policy. The endorsements are not widely tested by the courts, so there is no history of interpretations and rulings. The endorsements are frequently used on a one-off basis and may never be used again.

Umbrella policies are complex contracts that provide insurance coverage for many kinds of liability excess of many primary policies or self-insured retentions. Modifying endorsements may be equally complex and may require the undivided attention of all interested parties to the insurance contract. Too often, the undivided-attention part of this equation doesn't happen, and the resulting endorsement may or may not accomplish the intent of the policyholder or the insurance company. The worst part of this scenario is that neither party to the contract may realize that the endorsement doesn't match the intent.

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Needless to say, more care needs to be given to umbrella endorsement drafting;

- (1) By the client who can tell the agent or broker what kind of liabilities his business has and what his particular business needs to have covered by an insurance policy,
- (2) By the agent or broker who has hopefully made an analysis of the client needs, and
- (3) By the insurance company that is responding to these individual insurance needs.

IT'S IMPORTANT THAT THE ENTIRE CAST OF CHARACTERS MENTIONED ABOVE KNOWS

WHAT PROBLEMS NEED TO BE SOLVED.

The following group of examples may help to identify some particular situations which need attention, clarity and communication:

A. WATERCRAFT COVERAGE
Primary and umbrella policies both cover watercraft liability, depending upon the size of the boat. The maximum size is stated in the policies. Both policies can be endorsed to increase the maximum size. Sometimes a separate primary watercraft policy is purchased instead. If such a policy is purchased, it will provide coverage which is more expansive than the coverage provided by the usual GL primary policy.

Let's assume that the umbrella carrier was told to endorse the policy to cover a larger watercraft but no one mentioned that a separate primary watercraft policy was in place, and no further questions were asked. The

(Umbrella, continued inside)

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umbrella underwriter issued a typical "follow form" watercraft endorsement, which follows form the primary wording (which would state the size and description of the watercraft). Possible problems which could arise from this situation:

- (1) The umbrella policy has not been amended to show the new watercraft size.
- (2) The umbrella policy has not been amended to either agree

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to or exclude variances in policy wording (such as territory or pollution, for instance).

- (3) Could this situation end up with a claims hassle? You bet!

B. "FOLLOW FORM" ENDORSEMENTS USED FREQUENTLY BY UMBRELLA CARRIERS

"FOLLOW FORM" endorsements are used frequently by umbrella carriers as a generalized method of trying to be everything to everyone in a simplified way. Unfortunately, this method may end up not working out very well.

The follow form endorsement usually says something like this:

"This policy excludes liability arising out of _____. However, if the underlying policy provides coverage for _____, this policy will also provide coverage, but our coverage will be no broader than the coverage provided by the underlying policy."

Problems:

- (1) Does anyone know what the underlying wording says? It helps if both the policy wordings are very similar. The best way to do that is to match endorsement wording as nearly as possible.
- (2) Does the umbrella policy normally provide the coverage given by the primary policy? If not, the parties need to agree that certain coverages will or will not be provided.
- (3) Do the parties have the same coverage intention? Does the coverage provided solve the original problem?

C. NEW KINDS OF LIABILITY COVERAGE, SUCH AS DISPATCHMENT OR OTHER ONE-OFF COVERAGE

The primary policy may be silent regarding the requested new coverage, or it may have excluded the coverage or given limited coverage. The umbrella underwriter needs to be especially diligent in this situation and have a thorough understanding of what is needed and how to provide it.

Items to be specifically addressed in the endorsement:

- (1) A definition of the coverage provided
- (2) The amount of coverage provided
- (3) A policyholder retention (if any)
- (4) Any other applicable terms and conditions

WHY DOES ANY OF THIS MATTER?


All parties in the insurance transaction need to agree on the content of the contract when the contract is written. There is no substitute for clarity.

The policyholder is trying to buy

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predictability and peace of mind.

The insurance company is expecting to pay claims (or not) based on the estimated probabilities and possibilities.

Having to spend untold amounts of time and money in settling a claim and going to court upsets these expectations. 

Marilyn L. Schultz is an associate with Robert Hughes Associates, Inc., and an independent insurance and risk-management consultant. Most recently she was the underwriting vice president in the New York home office of an international insurance company.

Welcoming New Associates and Staff

When insurance matters become an important part of litigation, you need to have the very best insurance expertise, information and advice available. Robert Hughes Associates, Inc., has been a leader in providing that expertise when needed, and we are pleased to announce that we have recently added some impressive associates to our group of expert witnesses and consultants. Below is a short biography of each of these new associates.

E. Bryant Colley, CIC, CRM

Mr. Colley has been in the insurance industry for more than 35 years. He has a vast amount of experience in the agency business as well as underwriting and insurance-company management. He has experience dealing with many types of insurance, including homeowners, automobile, financial-institution bonds, directors' and officers' liability, professional liability and many other lines. He has held multiple positions with large insurance companies and agencies, including account executive, commercial property and casualty underwriter, underwriting manager, regional sales manager, regional sales director and regional underwriting manager. He is currently an independent insurance agent as well as an associate consultant with Robert Hughes Associates, Inc.

Stephen S. Collins


Mr. Collins earned a bachelor of science degree from Eastern Kentucky University. He began his insurance career in 1969 as an appraiser/claims assistant. He went on to hold various positions in the insurance industry, including claims adjuster with a large insurance company and senior claims representative and claims manager for a large chemical company. He has handled many types of claims, including large property claims caused by catastrophic storms, black lung workers' compensation claims, product liability claims, business interruption claims and others. He is currently the senior policy advisor to and chief of staff for the speaker of the Kentucky House of Representatives and also an associate of Robert Hughes Associates, Inc.

Marilyn L. Schultz

Ms. Schultz has more than 40 years of insurance industry experience. She has been involved in underwriting many types of risks, including excess and surplus lines, umbrella, railroad liability, oil and gas, and many others. She was an underwriter, senior underwriter and vice president of an umbrella department. She has served as an excess casualty branch manager and an excess casualty manager in the home office of a large insurer. She was most recently the underwriting vice president in the New York home office of an international insurance company.

We are also pleased to announce the addition of a new staff member to the company, Marta Bruner.

Marta Bruner

Ms. Bruner attended the University of Oklahoma and began work at RHA in 2014. In addition to assisting with the day-to-day running of the Dallas office, she provides technical support on many litigation-support projects and is responsible for the company's accounts payable. 

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FROM NEAR AND FAR



Washington, D.C. — The National Oceanic and Atmospheric Administration (NOAA) has predicted that the 2015 hurricane season in the Atlantic will produce between six and 11 named storms, with three to six becoming hurricanes. NOAA also said that there will be two or fewer major hurricanes. NOAA's prediction for the Pacific is for 2015 to be an average year for hurricane development. It predicts between 15 and 22 named storms, seven to 12 hurricanes and between five and eight major hurricanes in the Pacific.



USA — According to Munich RE, natural catastrophes in North America during the first half of 2015 cost insurers \$8 billion. Overall losses amounted to \$12 billion. The largest cost for insurers was the severe winter storms that hit the northeastern U.S. and Canada in February.



Nepal — The powerful 7.8 magnitude earthquake that struck Nepal on April 25 caused the death of more than 8,800 people. The total losses were estimated to be around \$4.5 billion, with only \$140 million in insured losses. A second slightly smaller earthquake occurred two-and-a-half weeks later, killing another 230 people.



Central Europe — At the end of March a strong windstorm, Niklas, struck a large area in central Europe. Wind speeds were estimated to have reached more than 120 miles per hour. Insured losses were about \$1 billion, with total losses estimated at \$1.4 billion.

THE RHA REVIEW

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