



Workshop R

UMBRELLA LIABILITY INSURANCE

Presented by

**Steve Kahn
Principal
ARM Tech**

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Most contractors rely on their umbrella insurance to provide excess limits of coverage over their primary auto liability, general liability, and employers liability insurance. For many contractors, this line of coverage has been the most severely impacted by the current hard market. Because umbrellas are not standardized, the scope of coverage can vary significantly from one policy to the next. Contractors must carefully assess the scope of umbrella coverage to make accurate comparisons between policy forms and to negotiate effectively for changes. In this session, the speaker will outline some of the more common limitations insurers are placing on contractors' umbrella coverage and provide an overview of market developments. Learn how to get the most for your dollar and avoid the unexpected surprise of an uninsured loss.



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- Insurance
- Surety Bonding
- Owner Controlled Insurance Programs
- Contractor Controlled Insurance Programs
- Claims Administration
- Contractor Default Insurance
- Environmental
- Home Building
- Safety Programs

Steve Kahn
Principal
ARM Tech

Mr. Kahn is copresenting Workshop R, "Umbrella Liability Insurance," on Wednesday. He is a managing director with ARM Tech and one of the firm's founders. Mr. Kahn has spent 2 years as an underwriter and 24 years as an independent consultant. He has worked with numerous pools, individual governmental entities, and other types of organizations throughout the country. Mr. Kahn is past president of the Risk Management Research Council, past president of the Orange Empire CPCU Chapter and editor for *Practical Risk Management*. He holds an MBA with an emphasis in risk management from the University of Georgia.

Notes

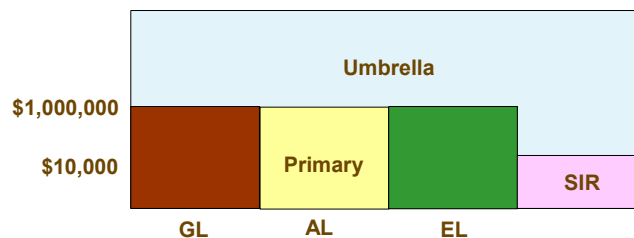
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UMBRELLA LIABILITY COVERAGE

Steven P. Kahn, CPCU, ARM
ARM Tech

BASIC FUNCTIONS OF AN UMBRELLA

1. Provide additional limits for claims covered by primary policies.
2. Cover some claims not covered by primary policies.
3. Drop down and replace primary policies when primary limits are exhausted.



AN UMBRELLA IS NOT:

1. A “following form” policy, which:
 - “Follows terms and conditions of underlying policies.
 - Does not have its own insuring agreements and exclusions.
2. The policy that applies immediately above a liability self-insurance program, which:
 - Does not drop down to replace exhausted underlying insurance.
 - Does not require maintenance of underlying insurance.
 - Does not require coordination of defense provisions with underlying policies.

POLICIES REVIEWED

Insurer	Form
AISLIC	Homebuilders Umbrella (Form 80341)
AISLIC	Commercial Umbrella (Form 60818)
Bituminous Casualty Company	Commercial Umbrella (Form CUP 00 05)
Transportation Insurance Company (C N A)	(Form G-15057-B)
Empire Indemnity Insurance Company	Umbrella Liability Policy (Form EM 43 01)
National Union Fire Ins. Co. of Pittsburgh, PA	Commercial Umbrella (Form 57697)
Royal Insurance Company of America	Big Shield Catastrophe Liability Policy (Form UL 8024) Wisconsin
Royal Insurance Company of America	Big Shield Catastrophe Liability Policy (Form UL 8024) California
Travelers Indemnity Company	(Form UM 00 01)
Westport Insurance Corporation	Commercial Excess Liability and Umbrella Liability (Form EU 02)
American Guarantee & Liability Ins. Co. (Zurich)	(Form U-UMB-103-A CW)

UMBRELLA POLICY CONSTRUCTION

1. Declarations page
2. Insuring agreements
3. Exclusions
4. Conditions
5. Endorsements

Policies are ***not*** standard.

UMBRELLA INSURING AGREEMENTS

The Insuring Agreement consists of:	Number of Policies
One insuring agreement providing BI, PD, and personal and advertising injury excess of the underlying insurance or the umbrella SIR	7
Two insuring agreements, one providing excess liability, one providing umbrella liability	2
Two insuring agreements, one providing BI and PD excess of underlying insurance and the SIR, one providing personal and advertising injury excess of underlying insurance and the SIR	2

ADDITIONAL INSURED PROVISION

Entities are Included as Additional Insureds if:	Number of Policies
Underlying policies show the entity as an additional insured, or if required by a written or oral contract	1
Underlying policies show the entity as an additional insured, or if required by a written contract	7
Underlying policies show the entity as an additional insured	2
If required by a written contract	1

EXCLUSIONS

Mold and Fungus Exclusion	Number of Policies
Mold and fungus are excluded	9
Bacteria is also excluded	2
Biological contaminants are also excluded	1
The Mold and Fungus exclusion does not apply for fungus intended for consumption	2
The exclusion is in the body of the policy	1

EXCLUSIONS

EIFS Exclusion	Number of Policies
Liability for EIFS systems is excluded	7
The exclusion is in the body of the policy	1

EXCLUSIONS

Asbestos Exclusion	Number of Policies
Asbestos liability is excluded	11
The exclusion is in the body of the policy	9

EXCLUSIONS

Pollution Exclusion	Number of Policies
A pollution exclusion applies	11
An absolute pollution exclusion applies	2
An absolute pollution exclusion applies, except for hostile fire, collision or overturn of an automobile or loss covered by the products/completed operations hazard	2
The pollution exclusion is the same as the exclusions in the ISO commercial general and automobile liability policies	7
The exclusion is in the body of the policy	10

EXCLUSIONS

Professional Liability Exclusion	Number of Policies
A professional liability exclusion applies	11
The exclusion applies to all professional work done by or for the named insured	6
The exclusion applies to architectural, engineering and surveying work done by or for the named insured	5
The professional liability exclusion is in the body of the policy	1
The professional liability exclusion is in the contractors limitation endorsement	4

PROFESSIONAL SERVICES EXCLUSION

The rendering, or failure to render, architectural, engineering or land survey professional services by or for you, including:

1. The preparing, approving, or failure to prepare or approve: maps, drawings, opinions, reports, surveys, change orders, designs and specifications; and
2. Supervisory, inspection or engineering services.

EXCLUSION – PROFESSIONAL LIABILITY – ENGINEERS, ARCHITECTS OR SURVEYORS

This insurance does not apply to “bodily injury,” “property damage,” “personal injury” or “advertising injury” arising out of professional services performed by or for you, including:

1. The preparing, approving, or the failure to approve: maps, drawings, opinions, reports, surveys, change orders, designs or specifications.
2. Supervisory, inspection, or emergency services, or the failure to provide those services.

EXCLUSIONS

Wrap-Up Exclusion	Number of Policies
A wrap-up exclusion applies	10
The exclusion applies to all projects ever insured in a wrap-up program	2
The exclusion applies only to BI and PD arising from a project insured in a wrap-up plan	8
The exclusion is in the body of the policy	1
The exclusion is in a contractors limitation endorsement	8

EXCLUSIONS

Residential Construction Exclusion	Number of Policies
A residential construction exclusion applies	3
The exclusion applies to all residential construction	2
The exclusion applies only to multi- and single-family housing, condominiums and apartments	1
The exclusion is in the body of the policy	0

EXCLUSIONS

Subsidence Exclusion	Number of Policies
A subsidence exclusion applies	3
The exclusion is in the body of the policy	0

PROPERTY DAMAGE EXCLUSION

Property Damage Exclusion	Number of Policies
A property damage exclusion applies	11
The exclusion is the same as the property damage exclusions in the ISO commercial general liability policy	7
Same as the ISO commercial general liability policy, except it does not apply to damage to real property the named insured or its subcontractors are working on	4

Property Damage to property being installed, erected or worked upon by the **Insured** or by any agents or subcontractors of the **Insured**.

That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations.

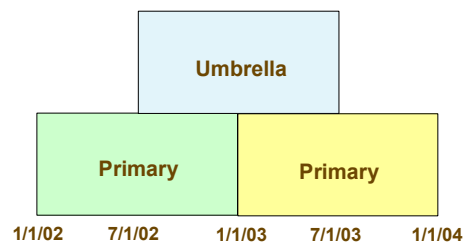
MAJOR POLICY CONDITIONS

Defense Costs	Number of Policies
Defense costs are included within the limit of liability	1
The policy is silent on how defense costs apply (but, the Limit of Liability provision shows the limits as applying to <i>damages</i> only)	4
Defense costs apply in addition to the limit of liability	6

DROP DOWN CLAUSE

1. Umbrella “drops down” to replace exhausted aggregate limits in primary policies.
Aggregate limits often apply to:
 - Personal and advertising injury liability
 - Products/completed operations liability
 - General aggregate
2. Aggregate limit in primary policy must be exhausted by claim occurring during umbrella policy period.

DROP DOWN CLAUSE



3. Maintenance of underlying clause:
 - Requires underlying insurance to be maintained, except for exhaustion of aggregate limits.

MAJOR POLICY CONDITIONS

Drop Down for Underlying Insurer Insolvency	Number of Policies
The umbrella will not drop down if underlying insurance is not available due to insurer insolvency	8
Drop down due to insolvency is not specifically addressed by the umbrella policy	3

MAJOR POLICY CONDITIONS

Maintenance of Underlying Insurance	Number of Policies
A maintenance of underlying insurance condition applies	11
Condition states the umbrella applies as if the underlying policies are in full force, if underlying insurance is not maintained	11
The umbrella policy will only drop down to provide coverage if scheduled underlying insurance is exhausted by loss occurring during the umbrella policy period	11
As part of the condition, the Maintenance Condition requires that the insured provide:	
Prompt notice if underlying insurance is cancelled or replaced	1
Notice within 30 days if underlying insurance is cancelled or materially changed	2
Notice within 30 days if underlying insurance is cancelled or replaced	2
Notice if underlying insurance is cancelled or replaced (but no time period for notice is shown)	1
No notice requirement applies	5

MAJOR POLICY DEFINITIONS

Bodily Injury is defined as bodily injury, sickness or disease, including resulting mental anguish or death	Number of Policies
Yes	1
Yes and adds mental injury, humiliation, shock or death resulting from physical injury	1
Yes and adds shock, fright, mental injury or disability	2
Yes and adds shock, fright, mental injury, humiliation or disability	6
Yes and adds mental disability (all as part of the personal injury definition)	1

MAJOR POLICY DEFINITIONS

Products/Completed Operations Hazard is defined as per the ISO commercial general liability definition	Number of Policies
Yes.	6
Yes, but any manual classification in primary CGL showing completed operations as "included" is covered by the General Aggregate Limit, not the Products/Completed Operations aggregate.	3
Yes, but losses arising from: <ul style="list-style-type: none"> - BI and PD arising out of the transportation of property - The existence of tools, uninstalled equipment or abandoned or unused materials Are part of the products/completed operations aggregate.	2

ENDORSEMENTS

Contractors Limitation Endorsements	Number of Policies
A contractors limitation endorsement applies	9
The Contractors Limitation endorsement excludes:	
BI and PD insured under a wrap up plan	8
Property damage to property being installed or worked upon	5
Property damage to leased or rented equipment	5
BI and PD arising out of architectural, engineering or surveying work done by or on behalf of the named insured	4
Subsidence	2
Property damage due to the explosion, collapse and underground hazard	2
BI and PD from all professional services	1
EFIS	1
Residential work	1
BI and PD from the use of cranes or scaffolding	1

CONTINUING DAMAGE LIMITATIONS

Continuing Damage Limitation	Number of Policies
A continuing damage limitation applies, limiting any continuing loss to a single occurrence	10
The continuing damage limitation excludes loss known of by any insured prior to policy inception	3
The continuing damage limitation excludes any loss that starts prior to policy inception	1
The continuing damage limitation excludes loss known of by officers, directors, partners and risk managers prior to inception	6
The continuing damage limitation does not apply to personal and advertising injury	6
The continuing damage limitation is in the body of the policy	4

UMBRELLA MARKET CONDITIONS

Thomas P. Grommell
Aon Risk Services

Umbrella Market Conditions

1. Still a problematic market
2. Often competitive – but increases of 10-20% still the norm
3. Primary underlying limit requirements rising
4. Underwriting process slower-more requests for information, terms reviewed more carefully, more scrutiny by carrier management
5. Homebuilders still a special situation - very painful market over last years, with limited choice for lead Umbrella markets

Umbrella Market Conditions

- Umbrella forms *not* standardized
- New, more restrictive forms are on the way
- We'll look at two that AIG will be using
- AIG is the industry leader - they've written the most business and have paid the most losses
- We look at AIG's forms as AIG is the industry leader and they are very influential in the industry

Umbrella Market Conditions

AIG

- Using \$25 million in net capacity. [\$50 million available]
- Not just “National Accounts”- 85% of business is middle market
- GL attachments typically 2/4/4. Very careful scrutiny of u/l aggregates
- New Umbrella Form...*which can be amended*
- Homebuilders Form...*which can be amended*

Umbrella Market Conditions

New AIG Umbrella Form

- Some of the changes are a delayed reaction to changes made by ISO GL policies years ago
- Among these changes are the “Known Loss Exclusion”

Umbrella Market Conditions

ISO GL Wording Covers Loss

- That takes place in policy period
- But..if loss is first known by Insured prior to the policy period, there is *no cover* in current policy - cover reverts to the prior Occurrence policy
- Only one GL policy will cover a *Single Occurrence* loss - even if the loss continues to unfold into future years, this development is covered by the earlier GL policy

Umbrella Market Conditions

Why did ISO make this change to the GL Policy?

- Continuous causation losses a huge problem for the industry
- Prevent stacking of limits over multiple policy periods
- Minimize disputes among carriers

Umbrella Market Conditions

AIG had a problem

- Its Umbrella form had different wording than the new ISO GL policies scheduled as underlying to it
- Feared “stacking” of its limits
- Feared erosion of scheduled underlying limits by losses that the Umbrella were not even covering

Umbrella Market Conditions

New UmbrellaPrime policy addresses this issue

- Any loss known to the Insured before inception is excluded [similar to ISO] but
- New Umbrella does not cover further development of Single Occurrence beyond Umbrella’s own policy period
- Umbrella covers only that portion of *Single Occurrence* that takes place under its own policy period
- There is potential for gap

Umbrella Market Conditions

How can the gap be plugged? Will the renewal Umbrella cover future development of this reported loss?

NO –the Known Loss Exclusion would apply...can anticipate no cover under new program

Umbrella Market Conditions

How can this coverage gap be bridged?

- AIG can amend UmbrellaPrime to cover future development of Single Occurrence...but this is a change to the basic form that must be negotiated.

Umbrella Market Conditions

UmbrellaPrime Known Loss Exclusion applies if loss is known by Risk Manager and other parties

- If Stockholders and Additional Insureds, as Insureds, have knowledge of said loss, believe that the Known Loss Exclusion would apply
- We are seeking to limit the scope of this exclusion

Umbrella Market Conditions

**UmbrellaPrime states it is “Follow Form Defense”
...if it is inside limit of underlying, it is inside
limit of Umbrella and vice versa**

But

- Underlying structures will often consist of both a defense-in-addition GL which sits above a scheduled defense-inside SIR
- How would Umbrella respond above such a structure? Unclear. Being discussed now.

Umbrella Market Conditions

UmbrellaPrime changes from previous form include:

- Aircraft Exclusion
- Watercraft Exclusion over 26 feet
- New War Exclusion
- “Change in Control” wording

We continue to discuss all points with AIG. They will negotiate these and other terms.

Umbrella Market Conditions

AIG Homebuilders Form

- Address concerns as to attachment point, stacking and coverage
- “Close of Escrow” Form
- No Completed Operations Coverage for Projects completed before inception...ten years Completed Operations coverage for scheduled projects completed in policy period
- Defense inside limits of liability, but do not erode underlying
- Underlying SIR // No agg erosion
- Preexisting Damage Exclusion
- AIG willing to negotiate all terms and conditions ...can negotiate cover for previously completed projects

Umbrella Market Conditions

ACE USA

- Feel that market is still hard and “needs to be”
- Capacity \$25 million
- Can't put residential homebuilders in treaty.
Using \$10 million net, plus \$5 million fac, for total of \$15 million
- Feel that attachment points “still inappropriate”
- Significant “maintenance SIR” which can mean no drop-down
- Review of risk transfer provisions from subcontractors...maintenance of certificates

Umbrella Market Conditions

St. Paul

- Increases of 10-25%
- \$25 million capacity
- Can do New York
- No Homebuilders
- Expected that St. Paul Umbrella facility will continue to do business as before after the Travelers merger

Umbrella Market Conditions

Zurich

- \$25 million usable capacity
- Can sometimes do leads
- Want \$5MM underlying GL in New York State
- Likes General Contractors
- Considering use of Crystalline Silica exclusion going forward
- Not aggressive on homebuilders and when they do write this class, thinking about use of Claims-Made form

Umbrella Market Conditions

Other Markets

- CV Starr
- Allied World [AWAC]
- Starr Excess
- Max Re
- Westchester Fire
- Liberty International
- Diamond State
- Great American [no residential]
- American E&S
- Landmark / Allegheny
- ARCH US
- London / Europe a source of additional excess limits from Zurich UK, Swiss Re, Lloyds and others

Umbrella Market Conditions

NY a very problematic area for liability insurers

- Labor Law 240 [1] - “Safe Place to Work” mandates *absolute liability* in which plaintiff / employee culpability is *not a factor*
- Workers Compensation no longer sole remedy - “Third Party Over” suits are possible. If employee cannot sue the employer - they can sue the GC or Site Owner...who can in turn sue the subcontractor/employer

Umbrella Market Conditions

In this market, as in all markets, preparation will produce a better result

- Written submission should participate the underwriters questions
- If possible, provide ten years losses...and exposures
- get your submission into market 6-8 weeks in advance
- Meet with key markets