

Umbrella

Thursday, February 28, 2013, 9:50 a.m.

Robert Bryan, CPCU
Senior Vice President, Regional Clients
Munich Reinsurance America, Inc.
Princeton, N.J.

Bob Bryan is a senior vice president and casualty treaty/program underwriter for Munich Reinsurance America, Inc. He is responsible for managing his assigned casualty portfolio and is the practice leader for the umbrella liability line of business. The portfolio includes single-state and large regional umbrella clients.

Bob has been with Munich Re for more than 26 years. He joined the company in 1986 as a facultative casualty underwriter and has held a number of key underwriting positions including regional casualty program underwriting manager and casualty treaty/program underwriting manager. He is currently a team member of Munich Re group's General Liability Topic Network, representing U.S. exposures and international liability programs.

Bob began his insurance career with Liberty Mutual Insurance Company as an outside bodily injury claims adjuster in 1978 and worked in underwriting roles for three insurance companies from 1979 to 1986.

Bob is a graduate of Temple University with a bachelor's degree in business administration. He holds the Chartered Property Casualty Underwriter designation.

Richard Woytus
Vice President - Treaty
Munich Reinsurance America, Inc.
Chicago, Ill.

Richard Woytus is a vice president and casualty treaty/program underwriter for Munich Reinsurance America, Inc. He is responsible for managing his assigned casualty portfolio, which includes treaty and program business within the regional clients department.

Rich has been with Munich Re for more than 15 years. He joined the company in 1997 as a facultative casualty underwriter and casualty umbrella program underwriter. The underwriting position has recently progressed into treaty and program underwriting.

Rich began his insurance career with Liberty Mutual Insurance Company as a personal lines underwriter in 1987. After a two-year stint in personal lines, Rich moved to Liberty Mutual's commercial underwriting department. Rich had multiple underwriting roles with Liberty Mutual and Kemper before joining Munich Re. Rich is a graduate of Eastern Illinois University with a Bachelor of Science in finance and economics. He holds the Chartered Property Casualty Underwriter Associate in Reinsurance designations.

Session Description:

No two businesses are alike, so commercial umbrella liability policies must be tailored to meet the needs of different businesses. This session will take you back to the history of commercial umbrella/excess liability, from the first Excess Liability Market through the beginnings of the modern Commercial Umbrella/excess liability Market of the 1970 and the evolution of policy forms from their origins to recent policy language developments. Emerging issues for this line of insurance will be covered, including the impact of latent exposures and coverage extensions. No discussion about umbrella/excess liability coverage would be complete without unusual loss examples.

Top Three Session Ideas

Tools or tips you learned from this session and can apply back at the office.



1. _____

2. _____

3. _____

Umbrella

Session Outline

Overview

History of Commercial Umbrella Policies

- Personal Lines Exposures
 - Underlying Coverages
- Commercial Lines Exposures
 - Underlying Coverages
- Origins of Liability Market
- First Excess Liability Market and Excess of Loss Reinsurance
- Excess Coverage Developments and Self Insurance
- Introduction of First Umbrella Policy by Lloyds
- Contraction of Umbrella Coverage

Policy Language Developments

- ISO Umbrella
 - Insuring Agreements
 - Exclusions
 - Follow Form Underlying Wording for Exclusions
 - Professional Liability
 - Who is an Insured?
 - Conditions
 - Bankruptcy

Emerged(ing) Coverage Issue

- Primary & Noncontributory Coverage
- Order of Response
- Basis of Coverage
- Additional Insured Wording Recommendations

Common Endorsement Mistakes

Commercial Umbrella Claims

- Three Types
- Top Ten Most Ridiculous Lawsuits of 2012

Questions & Answers



COMMERCIAL UMBRELLA LIABILITY YESTERDAY, TODAY AND TOMORROW

February 28, 2013

Robert Bryan
Rich Woytus
Munich Reinsurance America, Inc.



Agenda



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1. History of commercial umbrella policies
 2. Policy language developments
 3. Emerged(ing) coverage issue – primary & noncontributory
 4. Common endorsement mistakes
 5. Unusual claims
 6. Question and answers

Personal Lines Exposures



Underlying coverages

- Auto
- Homeowners/rental owners
- Toys
 - Boats
 - Jet skis
 - ATVs
 - Snowmobiles

Commercial Lines Exposures



Underlying coverages

- Auto liability
- General liability
- Employers liability
- Watercraft
- Aircraft
- Professional liability

Origins of Liability Market



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- Employers liability laws – 1871 in Germany, 1880 in UK, 1880's in U.S.
 - 1887 Lloyd's underwriter Cuthbert Heath introduced non-marine insurance to Lloyd's of London
 - Scheduled forms
 - Comprehensive general liability developed in the 1930's; introduced nationwide in 1941
 - Earliest "standard" umbrella form 1950's

Source: International Risk Management Institute, Inc. (IRMI)

First Excess Liability Market and Excess of Loss Reinsurance



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- 1894 - Excess Liability Insurance Company, Ltd.
 - First excess of loss cover for The Hartford
 - Guy Carpenter and the concept of "burning cost" for reinsurance pricing
 - 1927 – Excess Insurance company of America
 - Other markets in the 1920s including professional reinsurance companies
American Re, Employers Re and Gen Re

Source: International Risk Management Institute, Inc. (IRMI)

Excess Coverage developments and Self Insurance



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- Need for “blanket” coverage form
 - “Gap layer” difference between primary limits and higher limits
 - Need for higher limits
 - Standalone excess policies over self-insured retentions during the 1920's

Source: International Risk Management Institute, Inc. (IRMI)

Introduction of First Umbrella Policy by Lloyds



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- First “broad form third-party excess liability” coverage form developed in 1940s
 - First quote – Gulf Oil Company June, 1948
 - First binder – June 1, 1949 Gulf Oil Company
 - Titled shortened to “umbrella liability” easier and less costly shorthand terms used in cables
 - Marsh exclusive access to form until 1956

Source: International Risk Management Institute, Inc. (IRMI)

Contraction of Umbrella Coverage

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- Lloyd's questions broad coverage
 - No exclusion for real and personal property CCC
 - Coverage for personal injury including patent infringement
 - Coverage for fidelity coverage
 - Development of LRD 1-60 form – quite restrictive
 - U.S. carriers modeled own forms after LRD 1-60

Source: International Risk Management Institute, Inc. (IRMI)

Policy Language Developments (1/4)

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- ISO Umbrella – Upcoming revisions April 2013
 - Insuring agreements
 - Addresses the drop down potential for sub-limits on underlying
 - Exclusions
 - Liquor liability
 - Alleged negligence or wrongdoing in the supervision, hiring...
 - Exclusion does not apply to BYOB establishments

Source: Insurance Services Office, Inc., 2012

Policy Language Developments (2/4)



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- ISO Umbrella – Upcoming revisions April 2013
 - Follow form underlying wording for exclusions pertaining to:
 - Employers liability
 - Pollution
 - Aircraft or watercraft
 - Professional liability
 - Negligent supervision
 - Retail druggist and retail drugstores – removed
 - Issues involving construction management PL exposures

Source: Insurance Services Office, Inc., 2012

Policy Language Developments (3/4)



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- ISO Umbrella – Upcoming revisions April 2013
 - Electronic data
 - Revision to include coverage for bodily injury
 - Distribution of material in violation of statutes
 - Incorporating mandatory endorsement CU 0004 – No longer required
 - Who is an insured?
 - Fellow employee exclusion to match automobile coverage form
 - Limit coverage for additional insured to contract limit

Source: Insurance Services Office, Inc., 2012

Policy Language Developments (4/4)



▪ ISO Umbrella – Upcoming revisions April 2013

- Conditions
 - Changing the wording to be consistent with the commercial excess liability
 - Appeals
 - Other insurance
 - Loss payable
 - Maintenance of/changes to underlying insurance
- Bankruptcy
 - Insolvency will not relieve the insurer of its obligation

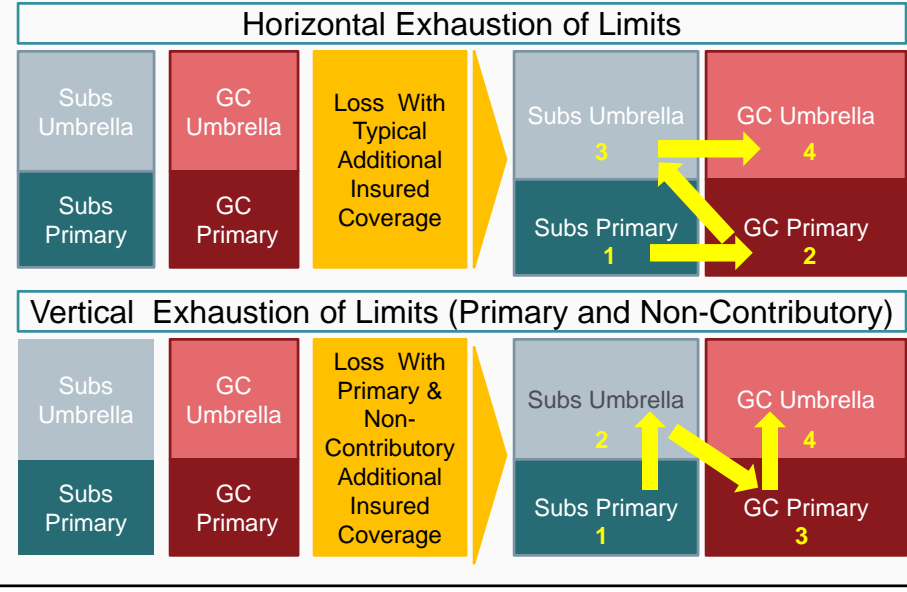
Source: Insurance Services Office, Inc., 2012

Emerg(ed) Coverage Issue



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- Primary and non-contributory coverage
 - Trend has emerged for umbrella carriers to modify additional insured (AI) coverage to apply on a primary and non-contributory basis (PNC)
 - Initially requested in the contracting industry, but moving to several other industries such as real estate, manufacturing
 - Initially in the Midwest but has spread countrywide
 - ISO vs. industry viewpoint and how it may differ, due to insured's needs
 - How does it work?

Primary and Non-Contributory
Order of Response



Primary and Non-Contributory
Basis of Coverage

While Primary/Non-Contributory Additional Insured Coverage inherently increases risk (see previous slide), risk may be further increased depending on the different levels of underwriting control and the "basis" of the A/I coverage.

(Not addressed here are still additional levels of risk associated with the "scope" of the Additional Insured Coverage.)

Basis of Coverage Underwriting Control	Per Project	Blanket Per Insured	Pure Blanket
Can Underwrite Each Project/Contract	Yes	No	No
Can Underwrite Each Additional Insured	Yes	Yes	No
Risk level	High Risk	Higher Risk	Highest Risk

Emerged(ing) Coverage Issue – (continued)

Primary and non-contributory coverage

- Additional insured wording recommendations
 - Combine AI wording and PNC wording on one endorsement
 - Project specific AI and PNC wording preferred over blanket wording
 - AI coverage should not serve to increase the policy limits
 - “Caused by” wording preferred over “arising out of” wording
 - Limit to ongoing operations vs. completed operations
 - Defense treatment should include right, but not obligation
 - Restrict coverage to the limit required by the contract

Additional Insured/Primary and Non-Contributory

Preferred Wording (Avoids potential ambiguity regarding excess nature of coverage)

Additional Insured/Primary and Non-Contributory Coverage

This endorsement modifies insurance provided under the following:

Commercial Liability Umbrella Coverage Part

Schedule

Name of Person or Organization and Designated Project(s): (Although not recommended, underwriter may designate "All Projects" for a given AI if they want to provide "Blanket Coverage")

Section(Fill In) – Who is an Insured is amended as follows:

With respect **solely to the additional insured and the project(s) scheduled above** and **only to the extent required by a written contract or agreement** between the Named Insured and the above designated party for the projects scheduled above; and further limited by the coverage provided by this policy, the coverage afforded hereunder to the above designated additional insured will apply on a primary basis without contribution from any other valid and collectable insurance that is available to the above designated additional insured but only for "bodily injury" or "property damage" **caused in whole or in part, by the named Insured** at the project designated in the schedule above and further limited to the extent required by such written agreement for the project listed above.

The **most we will pay** under this insurance on a primary basis without contribution from any other valid and collectable insurance that is available to the above designated additional insured **is the amount of insurance required by the written contract or agreement between the Named Insured and the above designated party, or the Each Occurrence Limit designated in the Declarations of this policy, whichever is less.**

Notwithstanding anything contained herein, the umbrella coverage afforded by this endorsement applies excess of the underlying coverage stipulated in the schedule of underlying insurance of either the Named Insured or the designated Additional Insured, whichever is greater.

Common Endorsement Mistakes



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- Follow form v. exclusion
 - Additional insured
 - Claims made v. occurrence
 - Concurrence with underlying general liability
 - UM/UIM

Commercial Umbrella Claims



Three Types of Claims

- Catastrophe claims
- Dropdown due to aggregate erosion
- Dropdown of primary uninsured loss

The Top Ten Most Ridiculous Lawsuits of 2012



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1. Intoxicated Florida driver pleads guilty to manslaughter, then sues victim he killed
 2. Michigan woman files a \$5 million lawsuit for the leftover gas still in her repossessed car
 3. 13-year-old Little Leaguer sued by spectator who got hit with baseball
 4. Maximum security inmate who went to jail with five teeth sues prison for dental problems
 5. Anheuser Busch sued when longneck bottle used as weapon in bar fight

Source: U.S. Chamber Institute for Legal Reform

The Top Ten Most Ridiculous Lawsuits of 2012 (cont)



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6. National Football League fan sues Dallas Cowboys over hot bench
 7. California restaurateur sues for disabilities act violations in parking lot he doesn't own
 8. Colorado man wins \$7 million blaming illness on inhaling microwave popcorn fumes
 9. \$1.7 billion suit claims City of Santa Monica wireless parking meters causing health problems
 10. Bay Area parents sue school after their son was kicked out of honors class for cheating

Source: U.S. Chamber Institute for Legal Reform

QUESTIONS?

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