IN THE SUPREME COURT OF GEORGIA

No. S99Q1575

HARTFORD CASUALTY INSURANCE COMPANY,
Appellant,

v.

SCI LIQUIDATING CORPORATION,
F/K/A SUNRISE CARPET INDUSTRIES, INC.,
Appellee.

CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR AMICUS CURIAE

UNITED POLICYHOLDERS

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INTEREST OF AMICUS CURIAE

United Policyholders is a non-profit corporation dedicated to educating the public about insurance consumers' rights and duties under their insurance policies. United Policyholders' activities include organizing meetings, distributing written materials, and responding to requests for information from individuals, elected officials, and governmental entities. These activities are limited to the extent that United Policyholders relies on donated labor and voluntary contributions.

Amicus curiae has a vital interest in seeing that standard-form primary, umbrella and excess general liability insurance policies sold to countless policyholders are interpreted properly by insurance companies and the courts. As a public interest organization, United Policyholders seeks to educate courts on policyholders' insurance rights, so those rights are upheld and enforced throughout the country.

In doing so, United Policyholders, through their attorneys Eugene R. Anderson and Richard P. Lewis of Anderson Kill & Olick, P.C., request this Court affirm the trial court's decision. The trial court properly interpreted the Appellee's umbrella general liability ("GL") insurance policy to provide coverage for an "occurrence" for which insurance coverage was not provided by the underlying primary comprehensive general liability ("CGL") insurance policy.

QUESTIONS PRESENTED

Amicus curiae United Policyholders hereby adopt and fully incorporate by reference the Statement of Facts and Questions

Presented in the brief submitted to this Court by Appellee SCI Liquidating Corporation, f/k/a Sunrise Carpet Industries, Inc. ("SCI").

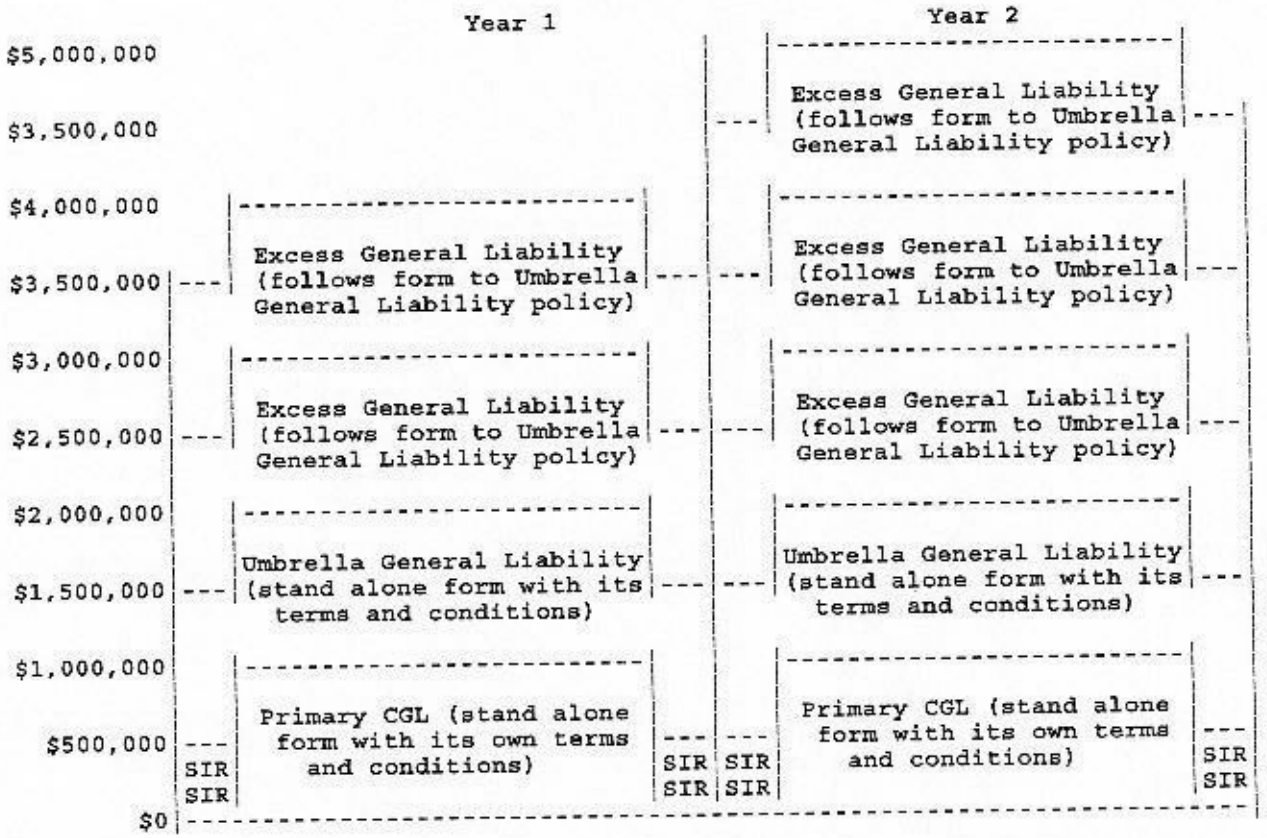
SUMMARY OF ARGUMENT

Amicus curiae United Policyholders submits this brief simply to provide information to the Court about the nature of umbrella general liability insurance coverage. As demonstrated below, it is common for an umbrella GL insurance policy to cover that which is excluded by an underlying CGL insurance policy; indeed, such "backstop" coverage is the main selling point of umbrella GL insurance policies. Accordingly, in this case, it is entirely natural for there to exist coverage under the broader wording of the umbrella GL insurance policy, despite the absence of coverage under the primary CGL insurance policy.

ARGUMENT

I. THE STRUCTURE OF A TYPICAL POLICYHOLDER'S LIABILITY INSURANCE PROGRAM

Most companies annually purchase, and have historically purchased, layers of liability insurance coverage, including primary CGL, umbrella GL and excess GL insurance policies. A typical corporate policyholder's insurance program for a two-year period might look like this:



In this two-year insurance program, the policyholder annually purchased primary CGL insurance policies with limits of $1,000,000, and umbrella GL insurance policies with limits of $1,000,000. Umbrella GL insurance policies are not standard throughout the industry, but generally contain standardized wording and do not vary to any substantial degree. An umbrella GL insurance policy's broad obligations to pay "kick in" at the exhaustion of the underlying CGL insurance policy's limits for occurrences covered by that primary policy (often referred to as an umbrella GL insurance policy's "Coverage A"), <u>or</u> above the policyholder's "retained limit" for occurrences not covered by the primary CGL insurance policy (often referred to as an umbrella GL insurance policy's "Coverage B"). For instance, a typical Lloyd's of London umbrella GL insurance policy explicitly

agrees to cover, above the policyholder's retained limit, all occurrences not covered by the primary insurance policy:

> II. *Limit of Liability*
>
> Underwriters hereon shall only be liable for the Ultimate Net Loss the excess of either
>
> (a) the limits of the underlying insurances as set out in the attached schedule in respect of each occurrence covered by said underlying insurances; or
>
> (b) $25,000 Ultimate Net Loss in respect of each occurrence not covered by said underlying insurances. . . .[1]

Thus, in the example above, the coverage provided by the umbrella GL insurance policies is broader than that provided by primary CGL insurance policies, and attaches at two levels: (i) "Coverage A" attaches at the exhaustion of the primary CGL insurance policies, or $1,000,000 in this example, for occurrences covered by the primary CGL insurance policies, or (ii) "Coverage B" attaches at a "retained limit," or "self-insured retention" ("SIR"), or $500,000 in this example, for occurrences not covered by the primary CGL insurance policies but covered by the umbrella GL insurance policies.

The policyholder in this example also purchased two $1,000,000 excess GL insurance policies in Year 1, and three $1,000,000 excess GL insurance policies in Year 2. Although not typically stand-alone, standard-form insurance policies, excess

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1. Ray R. Poulton, et al., Umbrella Liability Coverage: A Study Project of the Northern California Chapter Society of Chartered Property and Casualty Underwriters, CPCU Annals at 261 (Winter 1960) ("Poulton") (attached hereto as Ex. A). For the convenience of the Court, this article and other secondary sources to which this Brief refers are attached as Exhibits to this Brief.

GL insurance policies, like the ones purchased by this hypothetical policyholder, usually follow form to all the terms and conditions of the controlling umbrella GL insurance policy. Thus, like the umbrella GL insurance policies, the excess GL insurance policies in this example provide two types of coverage: the first excess GL insurance policy in both years begins indemnifying the policyholder's loss at $2,000,000 for occurrences covered by the primary CGL insurance policy, and at $1,500,000 for occurrences not covered by the primary CGL insurance policy but covered by the umbrella GL insurance policy.

II. THE COVERAGE PROVIDED BY TYPICAL UMBRELLA AND EXCESS GL INSURANCE POLICIES

Typical umbrella GL insurance policies, and the excess GL insurance policies following form to them, obligate the selling insurance companies to pay for nearly every conceivable liability expense. As explained above, the insurance companies must pay these costs -- typically denominated the policyholder's "ultimate net loss" -- above either the limits of the policyholder's underlying insurance, or, if the underlying insurance does not apply, above the retained limit. The fantastic scope of such coverage is, in fact, the main selling point of umbrella GL insurance: it was designed to cover any liabilities that "slipped through the cracks" in the coverage of the primary CGL insurance policy. Umbrella GL insurance policies literally sit as an umbrella over primary CGL insurance policies, giving the

policyholder "backstop,"[2] "kitchen sink,"[3] "worry free,"[4] "peace of mind,"[5] "sleep easy,"[6] insurance coverage -- i.e., "errors and omissions" coverage for insurance buyers.[7]

The breadth of this language is no accident -- coverage for that excluded by underlying primary liability policies is the raison d'etre for umbrella GL policies. Lloyd's underwriters originated umbrella GL insurance policies "to provide in one policy, additional limits of liability, often not available in the domestic market, over all exposures covered by underlying insurance; and, in addition, to provide protection for exposures not normally under a primary program, as well as excess coverage over those areas voluntarily self-insured."[8] Thus, coverage for that omitted by underlying policies drove the development of the umbrella GL forms:

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2. Bernard J. Daezner, "Excess Liability, Umbrella, Aggregates, and Deductibles," in John D. Long & Davis W. Gregg, Property and Liability Insurance Handbook, at 606 (1965) ("Daezner") (attached hereto as Ex. B).

3. L.F. Hawley, "'Umbrella,' 'Kitchen Sink,' 'All Risk': Special Risk Underwriting," The National Insurance Buyer (Mar. 1957) ("Hawley") (attached hereto as Ex. C).

4. Poulton, at 245-46 (attached hereto as Ex. A).

5. 8A John A. Appleman, Insurance Law and Practice, § 4909.85 (1981) ("Appleman") (relevant pages attached hereto as Ex. D).

6. Sales Opportunities in EXCESS LINE COVERAGE, Home Insurance Company (1960) ("Home Sales Opportunities") (attached hereto as Ex. E).

7. Daezner, at 606; Poulton, at 245-46.

8. Poulton, at 245 (emphasis added); see also The Attorney's Umbrella Book, "Introduction," Vol. 1, at 3-8 (1994) (relevant pages attached hereto as Ex. F).

> [Umbrella policies were] aimed at large buyers of insurance with the idea of providing broader protection with the new concept of picking up all of the gaps in other coverages -- over a self-insured retention by the insured. The new contract served almost as an errors and omissions policy for any exposure which may have been overlooked. The umbrella "backstopped" all of the individual policies. Thus, if there were a gap resulting from a policy exclusion or a missing policy, the capital and surplus of the insured had at least catastrophe protection over the self-insured amount -- which was usually pegged at $25,000.

Daezner, at 606. Understandably, this breadth of coverage accounts for the vast popularity of the umbrella GL policies with policyholders like SCI:

> About 1955 that interesting phenomenon known as the "Umbrella" Policy came upon the scene, and swiftly became the vehicle for the provision of catastrophe insurance for a very great number of risks throughout the country. . . . Here was a policy which improved upon the terms and conditions of underlying insurance while providing the catastrophe limits required by enterprises of all kinds and sizes. The Umbrella Policy is designed to float above primary Automobile, General and Employers' Liability Policies, and to "drop down," as we say, to a stipulated amount, usually $25,000, where underlying insurance is not carried but where the loss falls within the terms and conditions of the catastrophe policy.[9]

Indeed, in 1957, a Director of the Association of Lloyd's Brokers noted that umbrella GL insurance policies provided such comprehensive protection that they had been referred to as "the Kitchen Sink." Hawley, at 12. Mr. Hawley defined the scope and nature of umbrella GL insurance as follows:

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9. Robert S. Gillespie, "Evolution of Umbrella Liability Policy: Blanket catastrophe liability insurance with a "drop down" into areas uninsured or underinsured is now a permanent part of the insurance programs of industries large and small," The Local Agent, at 18 (Feb. 1961) ("Gillespie") (attached hereto as Ex. G). At the time Mr. Gillespie wrote this article, he was the Vice President of the Indemnity Insurance Company of North America. Id.

> The unforeseeable perils of the present and future are what create the need for an adequate insurance program, devised to protect not only every conceivable risk but also those which may be unknown at the moment to any of the individuals involved in a given enterprise. Such protection has been introduced in recent years, and for lack of a better name has been referred to in the industry as an "Umbrella Liability" policy.
>
> ....
>
> Since it literally covers all risks, thereby insuring the unknown hazards, it is written as excess insurance applying both in excess of an existing insurance program and when no insurance is carried on a particular exposure, then in excess of a substantial self-insured deductible. For those exposures which are not specifically insured, the assured is required to be a self-insurer for a minimum amount of $25,000, which deductible of course may be increased upwards as required.

Id. at 12.

Thus, umbrella GL coverage can be triggered if "coverage is not provided in the 'primary' or 'excess' policies," wherein "the umbrella policy drops down to provide primary coverage":

> Umbrella insurance can be considered "excess" in two respects: (1) it provides extra limits with a combined blanket single limit over other existing liability coverages. . ., and (2) it provides extra coverage for other existing liability exposure not covered by the underlying liability contracts, above a self-retention limit (if any). The umbrella can include many coverages that the insured does not usually have in its underlying insurance, such as worldwide operations liability, personal injury liability and many others. These are only insured above the insured's retention limit or deductible (if any). The result is that important catastrophe liability protection is achieved.[10]

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10. The Attorney's Umbrella Book, "Introduction," Vol. 1, at 10; see also Daezner at 607 ("The third important feature of the umbrella is that it drops down to $25,000 or $10,000 in those areas which are not covered in the primary. This feature means that (1) coverage which would otherwise have required separate policies is picked up and (2) that exclusions in primary coverage are in effect eliminated for losses above $10,000 or $25,000."); (continued...)

Insurance companies have even boasted about the breadth of coverage provided by their umbrella forms to lure customers like SCI. According to a sales manual of the Home Insurance Company, umbrella GL insurance is "sleep-easy" insurance:

> The coverage afforded under [an umbrella] contract is perhaps the broadest form of comprehensive liability on the market. It affords the insured the nearest thing to complete "sleep-easy" insurance -- assuring him of broad, all-inclusive insurance with few, if any, exceptions.
>
> **Extensive . . . Popular**
>
> Among the outstanding features in this contract is the fact that in addition to providing the same coverage as that obtained from primary policies -- but on an Excess basis -- it extends beyond the primary coverage and affords protection where the primary would not respond. This extension of coverage in the Excess "Umbrella" comes in over a self-retention or out-of-pocket participation on the part of the insured. In other words, this "Umbrella' [sic] coverage acts as an over-all policy: It grants Excess limits and coverage both of insurance in force on an underlying basis, and also of self-insurance where coverage is not afforded.[11]

10.(...continued)
Appleman, § 4909.85 ("One very important type of coverage in these days of potentially high verdicts is that provided by so-called umbrella or catastrophe policies. . . . It should be noted that these policies often provide a primary coverage in areas which might not be included in the basic coverage, since it is the intent of the company to afford a comprehensive protection in order that such peace of mind may truly be enjoyed. In those areas, such coverage will, in fact, be primary."); Poulton, at 248 ("The umbrella policy is designed to float above all primary policies for automobile, general, employers' and other liability, and to 'drop down' to a minimum deductible amount where underlying insurance is not carried but where the loss falls within the terms and conditions of the umbrella.").

11. Home Sales Opportunities. Moreover, another early sales bulletin for umbrella liability insurance stated that it "purports to insure with very few exceptions the complete tort liability of the policyholder":

> This policy is not primarily designed to supplant existing coverage, but to make it possible to reduce
>
> (continued...)

III. COURTS ROUTINELY FIND COVERAGE UNDER UMBRELLA GL INSURANCE POLICIES FOR EXPOSURES EXCLUDED BY PRIMARY CGL INSURANCE POLICIES

The very purpose of umbrella GL insurance policies, as made clear by their express language and case law construing them, is to provide coverage (above a nominal retained limit) for claims deemed not to be covered by underlying, typically CGL, insurance policies. Courts have recognized the purpose and breadth of umbrella GL insurance policies -- and the coverage they provide for risks not covered by underlying insurance. For instance, in Commercial Union Insurance Co. v. Walbrook Insurance Co., 7 F.3d 1047 (1st Cir. 1993), the policyholder, itself an insurance company, sought coverage from its umbrella GL insurance company for damages stemming from negligent provision of loss-prevention services to a third party. Below the occurrence-based umbrella GL insurance policy at the time of the negligent acts, the policyholder had both a primary occurrence-based liability policy

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11. (...continued)

> the limits on existing policies and itself provide excess coverage in very substantial amounts as respects losses covered by existing contracts as well as high deductible coverage for losses excluded by underlying contracts.
>
> The Umbrella form purports to insure with very few exceptions the complete tort liability of the policyholder. . . .
>
> All in all, it would appear that this new policy is a logical development in the proper direction. It would certainly conduce to the worry-free slumber of the insurance buyer who can tie-up in one package all of the loose ends hanging from fifteen to twenty assorted liability policies. It might even be called a form of errors and omissions insurance for insurance buyers.

Poulton, at 245-46.

which specifically excluded losses of the type in question -- "engineers professional liability" ("EPL") losses -- and an endorsement to the primary policy covering EPL losses, but only on a claims-made basis. 7 F.3d at 1048. The umbrella policy covered "all sums . . . imposed upon [the policyholder] by law . . . or assumed under contract . . . for damages on account of . . . personal injuries, property damage, [or] advertising liability . . . arising out of each occurrence." Id. Moreover, the umbrella policy promised that it would cover, excess of a $25,000 self-insured retention, occurrences not covered by underlying policies. Id. Finally, the umbrella policy contained both an express endorsement which (i) provided claims-made EPL coverage excess of the primary's EPL endorsement, and (ii) amended its limit of liability to $250,000 for occurrence-based EPL losses not covered by the primary policy. Id. at 1048-49.

As none of the EPL claims had been filed during the primary or umbrella policies' claims-made periods, the policyholder brought action against the umbrella insurance company, asserting its policy provided EPL coverage above a $250,000 self-insured retention. Id. at 1049. The district court found that the umbrella policy did not provide coverage, agreeing that the umbrella's claims-made EPL endorsement was the only font of EPL coverage (i.e., the umbrella provided no occurrence-based EPL coverage), and that no claims had been brought during the policy period. Reversing the district court, the Court of Appeals first noted that, under the provisions of the umbrella, "when an occurrence is not covered by underlying insurance, the [u]mbrella

'drops down' and provides primary coverage." Id. at 1051. Then, noting that the EPL claims were covered by the broad terms of the umbrella policy, the court found the umbrella insurance company liable to provide coverage above the $250,000 retained limit:

> The parties agree that the [EPL claims] occurred within the [u]mbrella policy period. An explosion at an industrial plant plainly constitutes an "occurrence" within the meaning of the [u]mbrella, whose broad language provides that every activity which results in an occurrence for which [the policyholder] must respond in damages is covered, unless specifically excepted. Nowhere in the main body of the [u]mbrella are EPL acts or omissions excepted from coverage, either explicitly or implicitly. Accordingly, we concluded that the main body of the [u]mbrella extended indemnification for damages which [the policyholder] was obligated to pay due to EPL or any other (non-excepted) act or omission.

Id. at 1051. The Court found that its reading of the umbrella policy was the only one to make sense of the entire contract: the umbrella EPL claims-made endorsement provided excess coverage above the primary EPL claims-made endorsement, while the umbrella policy itself provided occurrence-based coverage above the $250,000 retained limit. Id.

Moreover, the court found its conclusion "comports with the basic nature and purpose of 'umbrella' policies":

> Umbrella policies differ from standard excess insurance policies in that they are designed to fill gaps in coverage both vertically (by providing excess coverage) and horizontally (by providing primary coverage). Moreover, this interpretation is consonant with the broader function served by umbrella policies: extending coverage even to unanticipated "gaps." As one authority has explained, umbrella policies effectively shift away from the insured the burden of choosing the risks to which the insured remains exposed:
>
>> [an umbrella] arrangement contrasts with the method of providing Excess Liability insurance along traditional lines. Under the excess

> approach, it is up to the insured . . . to choose those exposures against which excess protection is desired. The obvious disadvantage lies in the possibility of a wrong guess about the critical exposures. Under the Umbrella Liability contract, the principal guesswork is in the [underwriter's] rating [of the overall risk] . . . .
>
> F.C. & S. Bulletins, "Companies and Coverages: Specialty Lines at U-1 (December 1980).

Id. at 1053 (certain citations omitted).

Similarly, in Prudential Property & Casualty Insurance Co. v. Lawrence, 724 P.2d 418 (Wash. App. 1986), the court obligated an umbrella policy to provide coverage for a loss arguably excluded from an underlying homeowners policy sold to the same policyholder. At issue in Lawrence was whether "obstruction of view" constituted "property damage" under the homeowners and umbrella policies sold by the same insurance company. The umbrella policy provided that "[i]f there is no required underlying insurance that covered the claim, this policy will pay the amount you are legally obligated to pay over $500." 724 P.2d at 422-23. The court held that it was unnecessary to resolve the question under the homeowners policy because obstruction of view clearly constituted property damage under the umbrella policy, and the umbrella policy was required to provide coverage in excess of $500 for a loss arguably excluded under the primary policy. In so doing, the court recognized that umbrella insurance policies serve the purpose of providing coverage for gaps created by underlying insurance policies: "The very nomenclature chosen to designate umbrella or catastrophe policies

suggests an intent to protect against gaps in the underlying policy."[12]

CONCLUSION

Thus, the very purpose of umbrella GL insurance policies, as made clear by their express language and case law construing them, is to provide coverage (above a nominal retained limit) for

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12. Id. at 422 (citations omitted); see also County of Wyoming v. Erie Lackawanna Ry. Co., 360 F. Supp. 1212, 1221 (W.D.N.Y. 1973), aff'd, 518 F.2d 23 (2d Cir. 1975) (holding umbrella policy provided contractor's liability over retained limit where such coverage was not provided in the underlying policy); Georgia-Pacific Corp. v. Aetna Casualty & Sur. Co., No. 92-2-21950-6, Order at 2 (Wash. Super. Feb. 28, 1995) (holding that "in the event [the policyholders] prove an otherwise covered claim at trial which is subject to a qualified pollution exclusion in the underlying 1970-1973 primary policies, the [umbrella insurance company] must 'drop down' and respond in excess of any self-insured retention."); see generally Garmany v. Mission Ins. Co., 785 F.2d 941, 948 (11th Cir. 1986) ("The purpose of the [lower] retained limit is to extend different kinds of coverage than the existing liability insurance provided by the underlying policy and the extra limits of the umbrella policy."); Ridgeway v. Gulf Life Ins. Co., 578 F.2d 1026, 1030 (5th Cir. 1978) (same); Continental Casualty Co. v. Roper Corp., 527 N.E.2d 998, 1001 (Ill. App. 1988) (umbrella insurance company noting that it provided "primary coverage for risks not covered by underlying insurance or for damages not covered by underlying insurance," and explaining "an example of the latter situation is when punitive damages are sought for an occurrence which is covered by the primary underlying policy[, i]f the primary policy does not pay punitive damages, coverage B would pay those damages"); Jostens, Inc. v. Mission Ins. Co., 387 N.W.2d 161, 165 (Minn. 1986) (holding that an umbrella insurance company, which afforded "broader" coverage than the primary insurance company, and which broader coverage was essentially "primary," had a duty to defend claims falling both within the underlying primary coverage and the broader, umbrella, primary coverage); Bryan Construction Co. v. Employers' Surplus Lines Ins. Co., 290 A.2d 138, 139-40 (N.J. 1972) (an umbrella policy's "very nomenclature suggested a purpose to protect against gaps in underlying policies and indicated more than mere excess coverage"); American States Ins. Co. v. Maryland Casualty Co., 628 A.2d 880, 886 (Pa. 1993) (noting "[t]ypically, an umbrella carrier agrees to provide not only excess or umbrella coverage on claims within the ambit of the insured's general liability policy, but also primary coverage for those claims not included in the insured's basic general liability coverage").

claims deemed not to be covered by underlying CGL insurance policies. That such a result obtains in this case should therefore come as no surprise.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brian T. Valery, do this day certify that I have served a copy of the within and foregoing amicus curiae Brief upon counsel of record by depositing the same with Federal Express overnight postal service, postage prepaid, addressed as follows:

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Ray R. Poulton et al., Umbrella Liability Coverage, 13 C.P.C.U. Annals 243 (Winter 1960).

Umbrella Liability Coverage

A Study Project of the Northern California Chapter
Society of Chartered Property and Casualty Underwriters

INTRODUCTION

To many outside of the insurance profession, the business seems to be a static thing steeped in antiquity and those in it primarily engaged in chanting to each other such archaic wording as is found in marine policies. And to those within our profession who want progress the tenacious adherence to the "status quo" is frustrating. A closer look at the insurance picture, however, shows it to be a dynamic thing. Indeed, to a true conservative, the succession of changes tumbling over one another in seething profusion may lead him to long for life in a sequestered monastery or the comforting solitude of the hermit. In this kaleidoscope of change occasional developments stand out. The new umbrella liability policy projects itself in this way to the front of the busy insurance stage.

The Northern California Chapter of the Society of C.P.C.U. felt a study of this form would be timely and a study committee was appointed. It addressed letters to all domestic insurers who were known to be interested in the umbrella liability market. Twenty-three questions were asked about the methods of selecting and rating risks, the over-all experience on such business and whether any unusual losses had been encountered. Ideas about the future of this new coverage were solicited. Such inquiries also were sent to the larger London Lloyd's brokers and to the more prominent American insurance companies. Nearly everyone answered.

Replies were varied indeed. Some companies felt that the umbrella coverage program is doomed to failure, if indeed it has not already fallen from the weight of poor underwriting and faulty judgment. The president of one American company professed ignorance as to the whole subject. Needless to say, such expressions were from carriers who are not writing the coverage. Most companies are watching this program

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This paper was developed by a chapter study committee whose members were: Ray R. Poulton, Robert M. Babbitt, Jr., Edmund L. Bartholomew, Charles R. Coleman, A. C. Hart, Jr., (Miss) L. Marian Leonard, George C. Morris, L. W. Poulton, Richard M. Powers, Roy A. Westran, and John Creighton White.

with keen interest, even if they are not participating. No doubt others will write the coverage and many forward looking individuals feel that the umbrella policy is a bright new star in the liability firmament.

INTRODUCTION OF THE UMBRELLA IN THE UNITED STATES

The Umbrella form was originated by Lloyd's underwriters in London and introduced in the United States, probably first in Massachusetts, in about 1947. For such a robust and prominent infant as the Umbrella policy one would expect some proud parent to step forth and confess to its paternity or at least to being the stork that delivered it to U. S. shores. Whether this reluctance has significance, we can't be sure, but no one seems to be " 'fessing up."

As nearly as our committee could determine, the form was brought to the attention of the American insurance buyer by a large brokerage firm somewhat as a sales gimmick. Its appeal to the large buyer of insurance was through providing superior protection and perhaps higher limits for the same premium or a lower premium by a new method of marketing coverage. The mechanics were to revamp the conventional liability program by depressing the bodily injury limits to $25/50,000 or perhaps even as low as $10/20,000 and to reduce the property damage limits to a similar low level.

An umbrella policy would be placed as excess in a single limit from $500,000 up to provide the total coverage needed. This procedure was successful in cracking the domestic market's increased limits scale and it delivered a better insurance program at the same time. Unfortunately, it also defeated the original intent of the umbrella form which is that of a catastrophe form. At these low levels of underlying coverage, the umbrella was practically primary insurance, especially for the large corporation.

It is interesting to review an early sales bulletin on umbrella liability insurance, parts of which are quoted below:

UMBRELLA LIABILITY INSURANCE

For years insurance buyers for large industry have been concerned about the possibility of losses which might fall in between the coverage of sundry liability policies. Steps have, of course, been taken in the last four years to consolidate certain of these policies into one, such as the consolidation of the General liability and Automobile liability insurance contracts. Also it helps to place all liability policies in one insurance carrier, but these are only partial cures of dangerous situations, and even these procedures are not always possible.

After one considers the multiplicity of liability coverage ranging from Employers' liability through General liability, Automobile liability, Aircraft liability, Advertisers liability, Foreign liability and Marine liability, one can easily see that there can be, and usually is, lack of perfect integration between the various patches in this quilt of protection.

Furthermore, there is considerable duplication of high limits where multiple high limit policies are carried, and this can be expensive if we concede, as probably most of us do, that the possibility of say a major Automobile liability claim and a major Watercraft liability claim occurring at the same instant of time is almost non-existent.

The answer to both these problems seems to be provided by the Umbrella Liability policy which is currently being underwritten by Lloyd's London. This policy is not primarily designed to supplant existing coverage, but to make it possible to reduce the limits on existing policies and itself provide excess coverage in very substantial amounts as respects losses covered by existing contracts as well as high deductible coverage for losses excluded by underlying contracts.

The Umbrella form purports to insure with very few exceptions the complete tort liability of the policyholder. The insuring clause covers Personal Injuries and defines these as including, but not limited, to the following:

False Arrest
Disability
False Imprisonment
False Eviction
Detention
Malicious Prosecution
Discrimination
Humiliation
Invasion of Right of Privacy
Libel
Slander or Defamation of Character
Piracy, } committed or alleged to have been
Infringement of Copyright, } committed in the conduct of the
Infringement of Property Rights, } insured's advertising
Infringement of Contract Rights } activities

We assume from the fact coverage is not restricted to the exposures mentioned above that its intent is to pick up all similar liability, except that specifically excluded. This would include:

1. Removal of geographical limitations
2. Employer's liability
3. Watercraft and Aircraft non-ownership
4. No care, custody or control exclusion
5. Removal of exclusion as to property rented to, occupied by or used by assured
6. Complete Contractual liability protection, including oral assumptions, and employer's liability assumptions
7. Liquor liability

8. Coverage under the Jones Act
9. Coverage under the federal Longshoremen's and Harborworker's Compensation Act
10. Coverage under the Railroad Employees Act
11. Coverage for the personal Malpractice liability of doctors or nurses
12. Occurrence coverage (for both personal injuries and property damage).
13. Coverage for executive officers who are owners of vehicles used on behalf of the assured (excluded in automobile policies).
14. Elimination of water damage exclusion present in most Property Damage Liability policies.
15. Fills the gap caused by the limitation in public liability policies as to all claims caused by one lot of merchandise.
16. Rape, indecent exposure or lewd acts.
17. Alienation of affections.
18. Disclosure of confidential information
19. Maintaining a nuisance
20. Usury
21. Trespassing
22. Unfair competition
23. Perjury
24. Peonage
25. Obstructing justice
26. Maintaining a monopoly
27. Mayhem
28. Malicious Mischief
29. Conditions prejudicial to good health
30. Fraud
31. Impersonation
32. Covers personal liability of employees for business acts
33. Advertisers' and broadcasters' liability.

As respects premium costs, a most amazing situation appears to exist. While the policy carries a three year minimum of $6,000.00 and the actual cost in any given case will depend on the exposures, we have found in most of the cases which we have worked out so far, that the actual cost was very small indeed and in one case an actual saving in present premium cost was accomplished by use of the Umbrella policy. No rule of thumb seems to apply here but in those cases which we have so far worked out between 50% and 125% of the cost of the Umbrella liability policy has been paid for by the reductions in premiums for reducing the primary policy limits, made possible by superimposing the Umbrella.

All in all, it would appear that this new policy is a logical development in the proper direction. It would certainly conduce to the worry-free slumber of the insurance buyer who can tie-up in one package all of the loose ends hanging from fifteen or twenty assorted liability policies. It might even be called a form of errors and omissions insurance for insurance buyers.

As in the case of the introduction of the umbrella form itself, no one seems willing to confess to siring this masterful sales piece. It rather stirs the imagination to reflect on the type of claims which might require defense for piracy, rape, indecent exposure or lewd acts, alienation of affections, peonage and mayhem. It would seem difficult with respect to some of these acts to preserve the theory that liability insurance is to protect against unintentional damage.

By 1955, the umbrella type of policy was being sold widely in the American market. Because excess liability is generally considered good business, underwriters competed fiercely for the large and apparently juicy premiums. It does not take a great deal of salesmanship to persuade an insured to accept an umbrella policy if 125% of its premium can be paid for by reducing primary limits.

HIGHLIGHTS OF UMBRELLA PROTECTION

The dramatic element which caused the policy to become so popular was its unprecedented breadth of coverage including undefined personal injury liability coverage, property damage insurance on an unlimited occurrence basis and coverage for property rented to, occupied or used by or in the care, custody or control of the insured. An especially appealing feature of the early umbrella forms was the provision that its exclusions would not apply unless the primary policies contained the same exclusions. This conditional operation of the exclusions absorbed into the umbrella policy any coverage by which the primary policies might be broader.

In addition to combining practically all forms of liability protection, many umbrellas were written to include fidelity. It is reported that some umbrellas have even extended to boiler and machinery coverage. Specific policies had been previously tailored for large insureds granting many, if not all, such features, but with the umbrella policy an effort was begun to market such coverage freely and on the completion of a simple questionnaire.

By thus combining all types of liability protection under a single combined limit for personal injuries or property damage, substantial coverage could be provided for even the remotest hazard and at reasonable cost. It obviated the necessity for trying to pick the areas where the heaviest exposures exist.

As an example, for the operator of light vehicles in non-hazardous use, catastrophe limits for automobile property damage normally are not considered essential. A well-known chain of New York restaurants recently had one of its trucks punch a hole in a British Overseas Airlines

Comet at Idlewild. Fortunately, the damage was discovered prior to flight time, but it is not difficult to imagine how such an incident might result in a staggering loss. An Ohio paper manufacturer had its truck involved in a grade crossing accident which derailed a freight locomotive and five cars. Had the loss involved passenger trains (which also use these same tracks), the possible consequences make one shudder.

The umbrella policy is designed to float above all primary policies for automobile, general, employers' and other liability, and to "drop down" to a minimum deductible amount where underlying insurance is not carried but where the loss falls within the terms and conditions of the umbrella.

This is a major departure from former catastrophe insurance limits which supplement primary insurance through a certificate extending upward the terms and conditions of the primary. The umbrella policy is usually as broad as the primary insurance in every respect and broader in many. An umbrella provides straight excess limits over the exposures covered by the primary. Where the umbrella is broader than the underlying, it becomes primary. Such might be the case in areas involving care, custody and control, occurrence property damage, malpractice, advertising, libel, slander, infringement of copyright, employer's liability and liquor liability. The full umbrella limits then apply but subject to its deductible.

The umbrella form is designed to cover nearly every form of third-party liability with the possible exception of patent infringement. Even this is a borderline area. Underwriters have served notice that they intend to resist claims of this nature as being outside of the scope of the policy. However, one patent infringement case is now pending against a domestic umbrella policy on which reserves are reported for its limit of $1,000,000. Apparently the underwriters don't question that the policy's specially negotiated wording covers patent infringement. A suit on this case involves the possibility that the insured knew of the alleged patent infringement at the time the insurance was placed.

PROBLEMS UNDER EARLY UMBRELLA FORMS

Under the earlier forms of umbrella policies, such as that involved in the patent infringement case mentioned above, the underwriters perhaps did not realize the extent to which they were embarking upon uncharted waters. As is so often the case with producers anxious to market a new form and underwriters seeking to acquire premiums for lucrative business, the hazards involved seem to have been explored only

superficially. Certainly the umbrella wording was enough to make one stop and take notice.

An example of this is in the property damage wording of the early forms which provided that: "The term 'Property Damage' wherever used herein, shall include, but not by way of limitation, damage to or destruction or loss of property." It will be noted that no damage to tangible property need be involved—only the loss of a property right.

This wide-open wording covers much of the risk of doing business and invites such claims as injury to goodwill or reputation or for loss arising out of willful perpetuation of nuisances, trespass, unfair or discriminatory business practices, obstructing justice and many other elements of loss which can be said to involve guarantees of the scientific, business or professional ability and conduct of management. To the large buyer of insurance, no doubt it is comforting and "conducive to worry-free slumber" to have such risks borne by his underwriters. However, losses of this type can be tremendous, and it is doubtful that many insureds would be willing to pay the astronomically high premiums necessary to create the funds out of which such losses could be paid.

In California two pending cases of this nature involve substantial property damage losses. In one instance, a drainage district, a political subdivision of the State of California, obtained authority to condemn land for purposes of irrigation, sanitation, etc. Subsequently, when subsurface mineral deposits became a possibility, the drainage district sold rights. A major utility, as the principal purchaser of the gas which was subsequently produced, along with others to whom the gas production was sold, has been named as defendant in a suit by the original owners of the property who claim $35,000,000 in damages. This suit is based upon insufficient authority on the part of the drainage district to sell oil, gas or mineral rights in connection with property condemned for other purposes. The buyers, closely allied with the district, are being sued more or less as receivers of stolen goods.

The other California case involves damages (coincidentally also claimed at $35,000,000) sought by the United States government as a result of the subsidence of a portion of a naval base in southern California, due allegedly to subsurface removal of oil and gas.

The following are briefs of other cases covered by umbrella policies but not by primary insurance:

1. Assured: Contracting firm. Upper section of a catalytic cracking tower partially collapsed and deflected some 15° from vertical after which fire ensued. Unit was deemed to be in care, custody or control of contractor.

Builder's risk coverage had been carried by contractor but it excluded testing. As accident occurred during testing, contractor claimed under umbrella policy. Underwriters paid a loss of nearly $400,000 over the deductible of $25,000.

2. Assured: Metallurgical firm. In operation of smelter process, sulphur dioxide gas was emitted from the stacks of the smelter causing smoke damage to growing crops. Case settled for approximately $100,000 in excess of self-insured retention of $25,000.

3. Assured: Contracting firm. During testing, uncontrolled fire developed in furnace of oil refinery which resulted in damage to furnace and other structures of refinery. No builder's risk carried on this job because assured was not the prime contractor. Loss settled for $60,000 in excess of self-insured retention of $25,000.

4. Assured: Building material manufacturer. Roofing material, made up partly of tar saturated felt and coal tar pitch, was purchased from the assured. It emitted a strong odor which resulted in spoilage of food in a supermarket. Suit was against the building owners and assured for $500,000. This case is still open and carries a substantial reserve.

5. Assured: Coal miner. Assured engaged in strip mining which consists of removing surface of land and then piling this surface ground, rocks, boulders, etc., on side of hill adjacent to operations. This is referred to as "debris" or "spoil." During heavy rain, which occurred intermittently during entire month, debris and spoil washed down onto adjacent property damaging buildings and farmland. Total claim—$90,000.

6. Assured: General seed house. Five railroad carloads of corn, treated with seed fungicide, were sold to a retailer who in turn resold it to a large poultry firm. The fungicide caused injury to the poultry. Assured did not carry primary products liability insurance. Claim settled for approximately $80,000 in excess of the self-insured retention of $25,000.

7. Assured: Milling business. Assured wrote statutory (Missouri) dismissal letter which claimant alleged kept him from securing employment. Primary insurance applied only to bodily injuries and did not cover this personal injury. Claim is for $30,000.

8. Assured: Poultry feed producer. Poultry feed was sold containing a deleterious substance causing death and injury to chickens of customers. It forced one customer out of business. This is considered an "occurrence" rather than an "accident." Estimated total cost—$150,000.

Some of the cases above involve the care, custody or control exclusion of the primary policies. Others involve the problem of "accident" versus "occurrence." All but one is for property damage. The other case is on personal injuries as distinguished from bodily injuries.

As a result of such claims, underwriters began in 1959 to increase their scrutiny of the hazards under umbrellas. On both new business

and renewals, the level of rates was examined. No longer could primary limits be depressed with more than enough premium savings to pay for the umbrella. Effective January 1, 1960, underwriters at Lloyd's really threw a bomb at producers by bringing out a new market-wide form. It was a "dilly."

In it, all of the exclusions were made absolute, regardless of the primary coverage. One exclusion in particular seemed most limiting. It read: "This policy shall not apply to any claim arising from a pre-existing event or condition which to the Named Assured's knowledge might give rise to a loss hereunder." This exclusion was indeed frightening as an avenue of denying liability. What event or condition in an insured's history might *not* give rise to a loss? This new form limited Property Damage coverage to "damage to or destruction of tangible property." The protection afforded was so restricted as to be narrower than much of the primary insurance.

THE LLOYD'S FORM OF JUNE, 1960

Resistance from producers and from insurance buyers led to a further revision of June, 1960. The Lloyd's coverage now seems to be broad but reasonable. Under the new form, the term "personal injuries" is defined but with broad language. This is a far cry from the original Lloyd's Umbrellas which provided that "personal injuries" wherever used in the policy should include but *not by way of limitation*, certain named torts.

The new property damage coverage is defined to mean "loss of or direct damage to or destruction of tangible property (other than property owned by the Named Assured)."

In the new Lloyd's form the exclusions are split into two parts. The first four are absolute and exclude:

1. Workmen's Compensation
2. Faulty Workmanship
3. With respect to advertising activities
   a. Failure to perform a contract
   b. Trade mark infringement
   c. Incorrect description of articles
   d. Mistake in advertised price.
4. War
   (Umbrellas may provide excess workmen's compensation coverage for self insurers, so the first exclusion can be deleted.)

The following additional exclusions are conditional and operate only if the primary insurance contains similar restrictions:

1. Assault and battery
2. Owned aircraft
3. Owned watercraft
4. Injury of a fellow employee in the course of employment.
   (The last exclusion is necessary because the definition of assured includes all employees of the named assured while acting in their capacity as such.)

The most common amount for an umbrella is $1,000,000. In the London market this has usually been placed in three layers, the first for $100,000, a $400,000 first excess and a $500,000 second excess. These layers have been split roughly at 50% with Lloyd's underwriters and 50% British companies. Since the demise of the British Commercial, brokers are looking for a heavier participation by Lloyd's underwriters; and on the most recent placements the Lloyd's participation has increased to about 75%.

Many Lloyd's underwriters are not willing to participate except in excess of a "buffer" of at least $100,000 over the deductible. A larger portion of the first $100,000 layer has therefore been placed with British insurance companies. Other Lloyd's underwriters are willing to participate only in excess of $500,000.

One of the leading underwriting syndicates for Lloyd's umbrellas has amended its minimum deductibles. Formerly, a $25,000 deductible could be obtained where sales did not exceed $100,000,000. A new schedule calls for a $25,000 deductible where the sales are between $1,000,000 and $15,000,000; and a $100,000 deductible where sales are between $50,000,000 and $100,000,000. On larger risks the deductible will be determined by negotiation. There is indeed a substantial difference between the minimum $25,000 deductible previously available and a $100,000 deductible.

Special negotiations are necessary to arrange Lloyd's coverage for utilities, railroads, oil risks, financial institutions and contractors in view of the special problems presented by these risk classifications.

An alternate Lloyd's market has been established for contracting risks. These are entirely different underwriters who require minimum primary limits the same as for other types of risk; but excess workmen's compensation coverage cannot be provided. Umbrella placements can be made in one layer up to about $2,000,000 for average contracting risks.

DOMESTIC COMPANIES WRITING UMBRELLAS

The domestic companies which have offered Umbrella type covers are:

1. American Reinsurance
2. Continental Casualty
3. Employer's Reinsurance
4. Employers' Mutuals of Wausau
5. Employers' Surplus Lines
6. General Reinsurance
7. Insurance Company of North America
8. Travelers

This market is in a state of flux. Some large companies have been studying the situation and may by now be offering such coverage. Others may have withdrawn from the field. Those that are involved with this coverage have considerably less uniformity in coverage terms than the Lloyd's market, which is to be expected. Both domestic and Lloyd's underwriters of umbrellas will consider changes to meet the requirements of their insureds. This report discusses coverage differences in a general way. The committee realizes that in particular cases wording will vary considerably.

The Employers' Surplus Lines Insurance Company and the Continental Casualty Company forms are in direct competition with the London form. The original Lloyd's forms covered contractual liability whether in writing or oral. The January 1960 Lloyd's form required that contractual agreements be in writing, but this requirement was eliminated in the June 1960 changes. The Employers' form covers both oral and written contracts.

The Travelers approach to the umbrella field has been rather cautious. It is offering the coverage only to insureds whose primary program is with Travelers. Its policy is considerably more restrictive than the old Lloyd's form and still is not as broad as the 1960 Lloyd's changes.

Comparing the Travelers umbrella form to the new Lloyd's form, one finds that, in the definition of personal injury coverage Lloyd's includes additional possible causes of action arising solely from mental anguish, shock, disability and humiliation. Under the definition of insured the Travelers form includes employees but not as respects employee owned automobiles. The Lloyd's form covers employees without this restriction.

The Travelers form covers occurrences anywhere provided suit is brought within the United States, its territories or possessions in Canada.

The Lloyd's form covers occurrences anywhere in the world, and reportedly even has been amended to cover anywhere in the universe.

Under the Travelers form all of the exclusions are absolute. It does not cover contractual liability if not in writing. The Travelers excludes all watercraft and aircraft away from the premises, whereas the Lloyd's form covers non-owned watercraft and aircraft. The Lloyd's exclusions of owned aircraft and watercraft are not operative if the primary policy grants such protection.

The Lloyd's form applies its aggregate limit to each annual period. The Travelers policy has no similar provision and therefore its policy limit is aggregate regardless of the policy term. This could make a difference on a three year policy. The Lloyd's form of policy is usually written for a flat one year premium or an adjustable three year premium. The Travelers policy has provision for a premium schedule similar to its schedule for conventional liability coverage. The Travelers policy provides for a 10 day cancellation notice. The Lloyd's form normally requires 30 days, but this has been extended substantially—at least as long as 90 days.

Employer's Reinsurance, General Reinsurance and American Reinsurance have written Umbrella policies only in upper layers where capacity was a problem.

It is difficult to know how the domestic companies in this field compare in volume to each other or to the Lloyd's market. Lloyd's does not publish figures by lines. The domestic companies are not able or willing to indicate their volume. Probably the Continental and the North America write the largest volume of umbrellas in the domestic market.

As mentioned before, Continental largely follows the Lloyd's form, but it covers written contractual liability only and does not include non-owned aviation liability. The Continental's premium is usually based on receipts and adjusted at the expiration of the policy. Continental will not write this form for contractors and in the past has refused to do so for banks and financial institutions because of the errors and omissions hazard under the wide-open property damage cover. With coverage now limited to damage to tangible property, Continental may find itself able to handle risks of the latter type. The primary program required by Continental must include a minimum drop-down or deductible of $25,000 and conventional underlying insurance for at least $100/300,000 for bodily injuries, $25,000 for automobile property damage and $100,000 for other property damage. Continental is able to offer a top umbrella limit of $2,000,000.

The North America has for many years been a leader in offering excess insurance. As the London market made inroads on all types of conventional excesses through the umbrella policy, INA placed its blanket catastrophe liability policy in competition, calling its new policy Big Top. The Big Top form is not as broad as the early Lloyd's forms. Consequently INA's volume was at first quite limited. When Lloyd's drastically restricted its coverages in January, 1960, the INA Big Top policy was unchanged. A substantial increase in offerings to INA and in its business written under this form soon came about.

The Big Top policy may be written over primary insurance of INA or of other carriers or over self insurance. The following primary limits are recommended (but not required):

1. Employers Liability	$25,000 Each Accident
2. Comprehensive General Liability	100/300/300,000 BI 50/100,000 PD
3. Comprehensive Automobile Liability	100/300,000 BI 25,000 PD
4. Comprehensive Aviation Liability	100/300,000 BI 100,000 PD
5. Fidelity	25,000 Each Loss

The Big Top policy provides for a deductible of at least $25,000 on each occurrence. It may cover watercraft and aircraft liability both for owned and non-owned exposures.

The "drop-down" into areas uninsured or self-insured has occurred reluctantly in ways unplanned by the excess underwriters. These grew out of differences in the terms and conditions of the primary policies and the catastrophe cover, differences that obviously could be expected to breed controversial claim situations. Where the primary and excess policies express the same condition or exclusion in materially different ways, thereby failing to dovetail efficiently, the possibility is always present that carriers will not agree as to the application of their respective policies to a loss.

As the excess policy invites itself into a loss position by virtue of a drop-down operation, the primary carrier may be encouraged thereby to accept the invitation by being more literal in the interpretation of its policy than might otherwise be the case. A primary carrier will be much quicker to deny liability if it knows an umbrella policy will pick up the loss. However, the umbrella carrier is not going to concede that the wordings of the two policies do not have identical meanings, thus preserving the elevated point of attachment of its policy. Feeling that umbrella

policies are thus poorly worded, INA in the development of its Big Top has retained the phraseology of American policies wherever possible.

There are three important areas where the drop-down is planned under Umbrella or Big Top policies. The first is concerned with injury to or destruction of property rented to, occupied or used by or in the care, custody or control of the insured. Like the umbrella policy the Big Top offers this coverage without qualification, except as to owned property. North America feels such exposures can be measured reasonably well in excess of $25,000, but they are difficult to rate from the ground up.

Contractual liability as respects injury to or destruction of such property, particularly leased real property of substantial value where the liability assumed by the insured goes beyond the statutory or common law liability, is a real problem under such coverage. Careful analysis is necessary in order to provide reasonable protection and to establish an adequate premium for lease-back arrangements, extraordinary property values, complicated corporate families and other provisions which resourceful attorneys insert in leases. Losses should be avoided which should remain the risk of the industry or the physical damage insurers.

The second area of drop-down under the umbrella and Big Top forms is with respect to personal injury liability. The term "personal injury" has no substantive legal meaning of the kind to make it useful as a foundation for building policy coverage. It can include virtually any cause of injury to the person from alienation of affections to maintaining a monopoly. To confuse the matter even more, although the term seems literally to limit its application to injury to natural persons, it can embrace injuries sustained by partnerships and corporations, thus invading the area of property damage liability coverage.

Undefined personal injury liability coverage is sufficiently troublesome. When it is joined in the same policy with undefined occurrence property damage coverage, and embraces "loss" of property as well as its injury or destruction, it amounts just about to a blank check. It is no wonder the current Lloyd's form defines personal injury and limits the property damage coverage to tangible property. The Big Top treatment of these items is similar to that of the new Lloyd's form.

The third field of drop-down under umbrellas has been under occurrences when the primary coverages applied only to losses caused by accident. Some of the original Lloyd's umbrella forms had no definition of occurrence. The definition in the current form is quite similar to that found in the Big Top.

The Big Top may be written on a composite rate basis (payroll, sales, etc.) or for a flat premium. For most risks INA's limit will be $5,000,000.

Whereas the majority of Lloyd's underwriters on umbrella policies will not consider contractors, and such risks must be taken to a separate syndicate, a large proportion of the Big Tops have been written for contracting firms.

THE MARKET FOR UMBRELLAS

Thus far this report has dealt with the differences between umbrella type policies offered by various carriers. Looking at the overall picture, what limits are available under umbrellas? One policy was placed in the American domestic market in the amount of $11,000,000. It has been estimated that the world market offers about $25,000,000. The consensus seems to be that the amount most frequently written is $1,000,000.

Most underwriters offering umbrella policies report little demand for the coverage on the West Coast. This is ascribed to the broad form of primary policies offered. In California property damage and bodily injury coverages under domestic policies commonly are written on an occurrence basis. Property damage policies ordinarily are amended at least to the bureau form of broad form coverage with respect to the care, custody and control exclusion, and sometimes broadened even further. Territorial limits frequently are extended to a world wide basis, at least with respect to products. Personal injuries coverage is offered by many carriers quite freely.

As an example of the broad coverage offered by some western underwriters, one large California carrier has been offering for years a single limit combined bodily injury and property damage liability policy on an occurrence basis. The policy amount applies to each occurrence with no aggregate. Protection extends to personal injury with an extremely broad definition reading: "Personal Injury to persons such as, but not limited to, Libel, Slander, Defamation of Character, False Arrest and False Eviction."

The policy also covers loss of or damage to personal property in charge of the named insured. This broad policy is furnished on a primary basis with no deductible. The insurance company agrees to investigate, negotiate settlement and defend suits. It will furnish appeal or attachment bonds as well as pay the premiums.

Its exclusions are few, being:

1. Workmen's compensation
2. War
3. Aircraft and watercraft
4. Damage to real property in charge of the insured
5. Occurrences caused intentionally by or at the direction of the named insured.

With such broad protection the appeal of and the need for umbrella coverage is less.

All umbrella policies are "indemnity" forms rather than undertakings "to pay on behalf of." Such wording, if not qualified, would require that the insured first satisfy the claim and then seek reimbursement under his umbrella policy. This would relieve the umbrella carrier of the responsibility or even the right to participate in negotiations for settlement. However, umbrella policies contain among the conditions a "loss payable" clause. This provides that the liability of the underwriters attaches when the amount of the underlying limits have been paid by or on behalf of the insured. The insured has 12 months to make claim under the umbrella policy after the insured shall have paid amounts in excess of the underlying or be obligated to pay such amounts by judgment against the insured after trial or by written agreement of the insured, the claimant and the underwriters. In effect this changes the policy from one of indemnity to one of "pure" insurance.

UMBRELLA RATING

Rating formulae were not made available to the committee. Indeed, they may not exist. There is admittedly a great element of judgment in these rates.

By analogy, in offering Lloyd's a $1,000,000 straight excess by a "rule of thumb" minimum rating approach we might expect a cost of $1,000. For an umbrella this premium would apparently be loaded about 50% for fringe benefits. A $1,500 premium is the result. For risks of a non-hazardous nature the minimum premium for a $1,000,000 Umbrella policy seems to average between $1,300 and $1,500, although we did learn of a $1,000,000 policy written for a West Coast bank on which the annual premium was $900.

The office with which many of the committee members are connected had an interesting experience on umbrella coverage offered through Lloyd's to a contracting firm. It quoted $1,500 annually for a $1,000,000 cover over B.I. limits of $100/300,000 and P.D. of $100,000. The Lloyd's American broker stipulated that it must be accepted by December 31, 1959. As indicated above, after this date Lloyd's changed its form and its underwriting vigilance. The $1,500 premium quoted would have increased the insured's annual premiums by approximately $500. While the insured was deliberating this increased insurance expense, December 31st went by.

Early in March of 1960 the insured decided the coverage was attractive and the case was resubmitted to underwriters. In an effort not to

leave any money on the table, the agency suggested to Lloyd's a three year flat premium of $3,000. Back came an *annual* quotation of $3,200. There had been no change in the exposures. The new quotation merely reflected the changed feeling of underwriters toward previous rate levels.

On a logging risk, one of the committee members received a quotation from Lloyd's of $10,000 annually. This was for a $1,000,000 umbrella over a broad primary of $1,000,000. The drop-down was also to $1,000,000. Thus the insurer would pay the second million on a two million loss. On the same risk a domestic carrier quoted a three year premium of $12,500; and this was for a $3,000,000 Umbrella with a drop-down to $25,000.

About as closely as the general rating approach of domestic carriers can be approximated is to indicate that premiums for the various exposures are figured for the increased limits offered by the umbrella policy using standard tables. These premiums are then increased by judgment factors for the drop-down areas such as occurrence bodily injury and property damage, personal injury coverage and property in charge of the insured. The increase might run 25%. A factor is then added for unknown exposures. This will vary by the nature of the risk but might average 25%. The above two factors total 50%—about the treatment that Lloyd's uses.

Some underwriters feel that excess limit tables may have some redundancy. Also the particular risk involved may offer less than the average exposure. Underwriters will use these factors in reducing the final premium by as much as 50%. The size of the premium will also enter into this final discount. Apparently the procedure by most brokerage offices is to get more than one quotation for any substantial umbrella. This competition between the carriers will undoubtedly tend toward more uniform rates as times goes on.

THE FUTURE OF UMBRELLAS

What about the future of umbrella forms? It is in this area that a study committee really sticks out its collective neck. It asked underwriters who were interested in umbrellas this question: "What is your prediction for the future of umbrella policies? Do you feel as underwriters have access to additional experience they will feel less apprehensive? Might this lead to lower deductibles and eventually the replacement of the type of comprehensive liability coverage we now have in the United States with the broader coverage of the umbrella?"

One of America's biggest writers of liability insurance replied that the umbrella program had failed because it was not carefully thought out by the originators, was not carefully priced and was inadequately underwritten. This company feels that blanket excess coverage is desirable

only if the primary is at least $500,000. Its spokesman expressed concern about what he feels is a dangerous trend in writing umbrellas over a self-insured primary because lack of proper control over claims may result. (The members of this committee are inclined to feel that an insured with a participation of $25,000 or more is going to be vigilant on claims and perhaps more vigorous in a safety program than if the primary limits were insured.)

Another of America's large liability carriers (which also does not write umbrellas) feels that "much of the glitter of the umbrella is disappearing." Its reasoning is that an important factor in determining the premium for an umbrella is the broadness of the underlying policy. Since the umbrella costs less when the underlying coverage is broader, the umbrella is creating a demand for broadened underlying policies. As the domestic carriers amend their primary coverage to provide all needed protection, the demand for umbrellas will diminish.

In contrast to the foregoing attitudes, a preponderance of forward looking opinion seems to be that umbrella coverage is here to stay. The 1960 revision of the Lloyd's form and further changes in the future will result in still less difference between the covers offered by various carriers. In time it seems probable that primary liability policies will be broadened by the influence of umbrellas.

No doubt, a truly "ideal" liability policy would be extremely short providing that: "The underwriters agree to pay on behalf of the insured for any liability." There would be no limits, no definitions of exposures and no exclusions. In some respects the umbrella was a prodigious jump in that direction. But the shining premiums available for umbrellas have not been all profit. The attracting light has proven to some degree to have been a flame which singed the wings of the wide-open underwriters, causing them to fall back a bit.

It is the opinion of the study committee that while the umbrella will be primarily of interest only to the larger insured in the immediate future, it is an important development in casualty underwriting. It will be interesting to see if time bears out these predictions.

Appendices

Lloyd's Umbrella Policy

Named Assured: As stated in Item 1 of the Declarations forming a part hereof and/or subsidiary, associated, affiliated companies or owned and controlled companies as now or hereafter constituted and of which prompt notice has been given to Underwriters. (Hereinafter called the "Named Assured").

INSURING AGREEMENTS

I. *Coverage.*

Underwriters hereby agree, subject to the limitations, terms and conditions hereinafter mentioned, to indemnify the Assured for all sums which the Assured shall be obligated to pay by reason of the liability

(a) imposed upon the Assured by law; or

(b) assumed under contract or agreement by the Named Assured and/or any officer, director, stockholder, partner or employee of the Named Assured, while acting in his capacity as such,

for damages, direct or consequential and expenses, all as more fully defined by the term "Ultimate Net Loss" on account of:—(i) Personal Injuries, including death at any time resulting therefrom; (ii) Property Damage; (iii) Advertising liability, caused by or arising out of each occurrence happening anywhere in the World.

II. *Limit of Liability.*

Underwriters hereon shall only be liable for the Ultimate Net Loss the excess of either

(a) the limits of the underlying insurances as set out in the attached schedule in respect of each occurrence covered by said underlying insurances; or

(b) $25,000 Ultimate Net Loss in respect of each occurrence not covered by said underlying insurances,

(hereinafter called the "Underlying Limits"):

and then only up to a further sum as stated in Item 2 (a) of the Declarations in all in respect of each occurrence—subject to a limit as stated in Item 2 (b) of the Declarations in the aggregate for each annual period during the currency of this Policy, separately in respect of Products Liability and in respect of Personal Injury (fatal or non-fatal) by Occupational Disease sustained by any employees of the Assured.

In the event of reduction or exhaustion of the aggregate limits of liability under said underlying insurances by reason of losses paid thereunder, this Policy shall (1) in the event of reduction pay the excess of the reduced underlying limit; (2) in the event of exhaustion continue in force as underlying insurance.

The inclusion or addition hereunder of more than one Assured shall not operate to increase Underwriters' limit of liability.

THIS POLICY IS SUBJECT TO THE FOLLOWING DEFINITIONS:

I. *Assured.*

The unqualified word "Assured," wherever used in this Policy, includes not only the Named Assured but also:—

(a) any officer, director, stockholder, partner or employee of the Named Assured, while acting in his capacity as such, and any organization or proprietor with respect to real estate management for the Named Assured;

(b) any person, organization, trustee or estate to whom the Named Assured is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this Policy, but only in respect of operations by or on behalf of the Named Assured or of facilities of the Named Assured or used by them;

(c) any additional Assured (not being the Named Assured under this Policy) included in the Underlying Insurances, subject to the provisions in Condition B; but not for broader coverage than is available to such additional Assured under any underlying insurances as set out in attached Schedule;

(d) with respect to any automobile owned by the Named Assured or hired for use in behalf of the Named Assured, or to any aircraft owned by or hired for use in behalf of the Named Assured, any person while using such automobile or aircraft and any person or organization legally responsible for the use thereof, provided the actual use of the automobile or aircraft is with the permission of the Named Assured. The insurance extended by this subdivision (d), with respect to any person or organization other than the Named Assured, shall not apply—

1. to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any occurrence arising out of the operation thereof;

2. to any manufacturer of aircraft, engines, or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents with respect to any occurrence arising out of the operation thereof;

3. with respect to any hired automobile or aircraft, to the owner thereof or any employee of such owner. This sub-division (d) shall not apply if it restricts the insurance granted under sub-division (c) above.

2. *Personal Injuries.*

The term "Personal Injuries" wherever used herein means bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination, humiliation; also libel, slander or defamation of character or invasion of rights of privacy, except that which arises out of any Advertising activities.

3. *Property Damage.*

The term "Property Damage" wherever used herein shall mean loss of or direct damage to or destruction of tangible property (other than property owned by the Named Assured).

4. *Advertising Liability.*

The term "Advertising Liability" wherever used herein shall mean:—(1) libel, slander or defamation; (2) Any infringement of copyright or of title or of slogan; (3) piracy or unfair competition or idea misappropriation under an implied contract; (4) any invasion of right of privacy; committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Named Assured's Advertising activities.

5. *Occurrence.*

The term "Occurrence" wherever used herein shall mean an accident or a happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally results in personal injury, property damage or advertising liability during the Policy Period. All such exposure to substantially the

same general conditions existing at or emanating from one premises location shall be deemed one occurrence.

6. *Ultimate Net Loss.*

The term "Ultimate Net Loss" shall mean the total sum which the Assured, or any company as his Insurer, or both, become obligated to pay by reason of personal injury, property damage or advertising liability claims, either through adjudication or compromise, and shall also include hospital medical and funeral charges and all sums paid as salaries, wages, compensation, fees, charges and law costs, premiums on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses and investigators and other persons, and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered hereunder, excluding only the salaries of the Assured's or of any underlying Insurer's permanent employees.

The Underwriters shall not be liable for expenses as aforesaid when such expenses are included in other valid and collectible insurance.

7. *Automobile.*

The term "Automobile," wherever used herein, shall mean a land motor vehicle, trailer or semi-trailer.

8. *Aircraft.*

The term "Aircraft," wherever used herein, shall mean any heavier than air or lighter than air aircraft designed to transport persons or property.

9. *Products Liability.*

The term "Products Liability" means

(a) Liability arising out of goods or products manufactured, sold, handled or distributed by the Named Assured or by others trading under his name if the occurrence occurs after possession of such goods or products has been relinquished to others by the Named Assured or by others trading under his name and if such occurrence occurs away from premises owned, rented or controlled by the Named Assured; provided such goods or products shall be deemed to include any container thereof, other than a vehicle, but shall not include any vending machine or any property, other than such container, rented to or located for use of others but not sold;

(b) Liability arising out of operations, if the occurrence occurs after such operations have been completed or abandoned and occurs away from premises owned, rented or controlled by the Named Assured; provided operations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to an agreement; provided further the following shall not be deemed to be "operations" within the meaning of this paragraph: (i) pick-up or delivery, except from or onto a railroad car, (ii) the maintenance of vehicles owned or used by or in behalf of the Assured, (iii) the existence of tools, uninstalled equipment and abandoned or unused materials.

10. *Annual Period.*

The term "each Annual Period" shall mean each consecutive period of one year commencing from the inception date of this Policy.

THIS POLICY IS SUBJECT TO THE FOLLOWING EXCLUSIONS:

This Policy shall not apply:—

(a) to any obligation for which the Assured or any company as its Insurer may be held liable under any Workmen's Compensation, unemployment compensation or disability benefits law provided, however, that this exclusion does not apply to liability of others assumed by the Named Assured under contract or agreement;

(b) to claims made against the Assured; (i) for repairing or replacing any

defective product or products manufactured, sold or supplied by the Assured or any defective part or parts thereof nor for the cost of such repair or replacement; (ii) for the loss of use of any such defective product or products or part or parts thereof; (iii) for improper or inadequate performance, design or specification; but nothing herein contained shall be construed to exclude claims made against the Assured for personal injuries or property damage (other than damage to the product of the Assured) resulting from improper or inadequate performance, design or specification;

(c) with respect to advertising activities, to claims made against the Assured for: (i) failure of performance of contract, but this shall not relate to claims for unauthorized appropriation of ideas based upon alleged breach of an implied contract; (ii) infringement of registered trade mark, service mark or trade name by use thereof as the registered trade mark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans; (iii) incorrect description of any article or commodity; (iv) mistake in advertised price;

(d) except in respect of occurrences taking place in the United States of America, its territories or possessions, or Canada, to any liability of the Assured directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Except insofar as coverage is available to the Assured in the underlying insurances as set out in the attached Schedule, this Policy shall not apply:—

(e) to liability of any Assured hereunder for assault and battery committed by or at the direction of such Assured except liability for Personal Injury or Death resulting from any act alleged to be assault and battery committed for the purpose of preventing or eliminating danger in the operation of aircraft, or for the purpose of preventing personal injury or property damage; it being understood and agreed that this exclusion shall not apply to the liability of the Named Assured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(f) with respect to any aircraft owned by the Assured except liability of the Named Assured for aircraft not owned by them; it being understood and agreed that this exclusion shall not apply to the liability of the Named Assured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(g) with respect to any watercraft owned by the Assured, while away from premises owned, rented or controlled by the Assured, except liability of the Named Assured for watercraft not owned by them; it being understood and agreed that this exclusion shall not apply to the liability of the Named Assured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(h) to any employee with respect to injury to or the death of another employee of the same Employer injured in the course of such employment.

THIS POLICY IS SUBJECT TO THE FOLLOWING CONDITIONS:

A. *Premium.*

Unless otherwise provided for the premium for this Policy is a flat premium and is not subject to adjustment except as provided in Conditions B. and F.

B. In the event of additional Assureds being added to the coverage under the Underlying Insurances during currency hereof prompt notice shall be given to Underwriters hereon, and if an additional premium has been charged for such addition on the Underlying Insurances, Underwriters shall be entitled to charge an appropriate additional premium hereon.

C. *Prior Insurance and Non-Cumulation of Liability.*

It is agreed that if any loss covered hereunder is also covered in whole or in part under any other excess policy issued to the Assured prior to the inception date hereof the limit of liability hereon as stated in Item 2 of the Declarations shall be reduced by any amounts due to the Assured on account of such loss under such prior insurance.

Subject to the foregoing paragraph and to all the other terms and conditions of this Policy in the event that personal injury or property damage arising out of an occurrence covered hereunder is continuing at the time of termination of this Policy Underwriters will continue to protect the Assured for liability in respect of such personal injury or property damage without payment of additional premium.

D. *Special Conditions Applicable to Occupational Disease.*

As regards personal injury (fatal or non-fatal) by occupational disease sustained by any employee of the Assured, this Policy is subject to the same warranties, terms and conditions (except as regards the premium, the amount and limits of liability and the renewal agreement, if any) as are contained in or as may be added to the underlying Insurances prior to the happening of an occurrence for which claim is made hereunder.

E. *Inspection and Audit.*

Underwriters shall be permitted at all reasonable times during the Policy Period to inspect the premises, plants, machinery and equipment used in connection with the Assured's business, trade or work, and to examine the Assured's books and records at any time during the currency hereof and within one year after final settlement of all claims so far as the books and records relate to any payments made on account of occurrences happening during the term of this Policy.

F. *Cross Liability.*

In the event of claims being made by reason of personal injuries suffered by any employee or employees of one Assured hereunder for which another Assured hereunder is or may be liable, then this Policy shall cover such Assured against whom a claim is made or may be made in the same manner as if separate Policies had been issued to each Assured hereunder.

In the event of claims being made by reason of damage to property belonging to any Assured hereunder for which another Assured is, or may be, liable then this Policy shall cover such Assured against whom a claim is made or may be made in the same manner as if separate Policies had been issued to each Assured hereunder.

Nothing contained herein shall operate to increase Underwriters' limit of liability as set forth in Insuring Agreement II.

G. *Notice of Occurrence.*

Whenever the Assured has information from which the Assured may reasonably conclude that an occurrence covered hereunder involves injuries or damages which, in the event that the Assured should be held liable, is likely to involve this Policy, notice shall be sent as stated in Item 3 of the Declarations as soon as practicable, provided, however, that failure to give notice of any occurrence which at the time of its happening did not appear to involve this Policy but which, at a later date, would appear to give rise to claims hereunder, shall not prejudice such claims.

H. *Assistance and Co-operation.*

The Underwriters shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against the Assured but Underwriters shall have the right and shall be given the opportunity to associate with the Assured or the Assured's underlying Insurers, or both, in the defense and control of any claim, suit or proceeding relative to an occurrence where

the claim or suit involves, or appears reasonably likely to involve Underwriters, in which event the Assured and Underwriters shall co-operate in all things in the defense of such claim, suit or proceeding.

I. *Appeals.*

In the event the Assured or the Assured's underlying Insurers elect not to appeal a judgment in excess of the underlying limits, Underwriters may elect to make such appeal at their cost and expense, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of Underwriters for Ultimate Net Loss exceed the amount set forth in Insuring Agreement II for any one occurrence and in addition the cost and expense of such appeal.

J. *Loss Payable.*

Liability under this Policy with respect to any occurrence shall not attach unless and until the Assured, or the Assured's underlying Insurer, shall have paid the amount of the underlying limits on account of such occurrence. The Assured shall make a definite claim for any loss for which the Underwriters may be liable under the Policy within twelve (12) months after the Assured shall have paid an amount of Ultimate Net Loss in excess of the amount borne by the Assured or after the Assured's liability shall have been fixed and rendered certain either by final judgment against the Assured after actual trial or by written agreement of the Assured, the claimant, and Underwriters. If any subsequent payments shall be made by the Assured on account of the same occurrence, additional claims shall be made similarly from time to time. Such losses shall be due and payable within thirty (30) days after they are respectively claimed and proven in conformity with this Policy.

K. *Bankruptcy and Insolvency.*

In the event of the bankruptcy or insolvency of the Assured or any entity comprising the Assured, the Underwriters shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

L. *Other Insurance.*

If other valid and collectible insurance with any other Insurer is available to the Assured covering a loss also covered by this Policy, other than insurance that is in excess of the Insurance afforded by this Policy, the Insurance afforded by this Policy shall be in excess of and shall not contribute with such other Insurance. Nothing herein shall be construed to make this Policy subject to the terms, conditions and limitations of other Insurance.

M. *Subrogation.*

Inasmuch as this Policy is "Excess Coverage," the Assured's right of recovery against any person or other entity cannot be exclusively subrogated to the Underwriters. It is, therefore, understood and agreed that in case of any payment hereunder, the Underwriters will act in concert with all other interests (including the Assured) concerned, in the exercise of such rights of recovery. The apportioning of any amounts which may be so recovered shall follow the principle that any interests (including the Assured) that shall have paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by them; the Underwriters are then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interests (including the Assured) of whom this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests (including the Assured) concerned, in the ratio of their respective recoveries as finally settled.

N. *Changes.*

Notice to or knowledge possessed by any person shall not effect a waiver or change in any part of this Policy or estop Underwriters from asserting any right

under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part hereof, signed by Underwriters.

O. *Assignment.*

Assignment of interest under this Policy shall not bind Underwriters unless and until their consent is endorsed hereon.

P. *Cancellation.*

This Policy may be cancelled by the Named Assured or by the Underwriters or their representatives by sending by registered mail notice to the other party stating when, not less than thirty (30) days thereafter, cancellation shall be effective. The mailing of notice as aforesaid by Underwriters or their representatives to the Named Assured at the address shown in this Policy shall be sufficient proof of notice, and the Insurance under this Policy shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the Named Assured or by the Underwriters or their representatives shall be equivalent to mailing.

If this Policy shall be cancelled by the Named Assured the Underwriters shall retain the customary short rate proportion of the premium for the period this Policy has been in force. If this Policy shall be cancelled by the Underwriters, the Underwriters shall retain the pro rata proportion of the premium for the period this Policy has been in force. Notice of cancellation by the Underwriters shall be effective even though Underwriters make no payment or tender of return premium with such notice.

Q. *Currency.*

The premiums and losses under this Policy are payable in the currency stated in Item 4 of the Declarations. Payment of Premium shall be made as stated in Item 5 of the Declarations.

R. *Conflicting Statutes.*

In the event that any provision of this Policy is unenforceable by the Assured under the laws of any State or other jurisdiction wherein it is claimed that the Assured is liable for any injury covered hereby, because of non-compliance with any statute thereof, then this Policy shall be enforceable by the Assured with the same effect as if it complied with such Statute.

S. *Service of Suit Clause.*

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon, at the request of the Assured, will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made as stated in Item 6 of the Declarations, and that in any suit instituted against any one of them upon this Policy, Underwriters will abide by the final decision of such Court or of any Appellate Court in event of an appeal. The person or firm named in Item 6 are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Assured to give a written undertaking to the Assured that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any State, Territory or District of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officers specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit

or proceeding instituted by or on behalf of the Assured or any beneficiary hereunder arising out of this Policy of Insurance, and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

T. *Maintenance of Underlying Insurance.*

It is a condition of this Policy that the Policy or Policies referred to in the attached "Schedule of Underlying Insurances" shall be maintained in full effect during the currency of this Policy except for any reduction of the aggregate limit or limits contained therein solely by payment of claims in respect of accidents and/or occurrences occurring during the period of this Policy. Failure of the Assured to comply with the foregoing shall not invalidate this Policy but in the event of such failure, the Underwriters shall only be liable to the same extent as they would have been had the Assured complied with the said condition.

I.N.A. "Big Top" Policy

In consideration of the payment of the premium as herein provided, and of their respective agreements as herein set forth, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Philadelphia, Pennsylvania, A Stock Insurance Company (herein called the company) and the party or parties named in the declarations made a part hereof (herein called the insured) do hereby agree as follows:

INSURING AGREEMENTS

I. *Coverage.*

The company agrees to indemnify the insured for ultimate net loss in excess of the retained limit hereinafter stated, subject to the limitations, conditions and other terms of this policy, which the insured may sustain by reason of the liability imposed upon the insured by law, or assumed by the insured under contract:

(a) Personal Injury Liability. For damages, including damages for care and loss of services, because of personal injury, including death at any time resulting therefrom, sustained by any person or persons;

(b) Property Damage Liability. For damages because of injury to or destruction of property, including the loss of use thereof, caused by an occurrence as defined herein;

(c) Advertising Liability. For damages because of libel, slander, defamation, infringement of copyright, title or slogan, piracy, unfair competition, idea misappropriation or invasion of rights of privacy, in any advertisement, publicity article, broadcast or telecast and arising out of the named insured's advertising activities.

II. *Definition of "Named Insured" and "Insured."*

"Named insured," wherever used, includes any subsidiary company of the named insured and any other company coming under the named insured's control of which it assumes active management.

The unqualified word "insured," wherever used, includes the named insured and also:

(a) any person, organization, trustee or estate to whom or to which the named insured is obligated by virtue of a written contract to provide insurance such as is afforded by this policy, but only with respect to operations by or in behalf of the named insured or to facilities of or used by the named insured;

(b) any additional insured, other than the named insured, included in the underlying policy(ies) listed in Schedule A but only to the extent that insurance is provided to such additional insured thereunder;

(c) except with respect to the ownership, maintenance or use, including loading or unloading, of automobiles while away from premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, or of aircraft, (1) any executive officer, other employee, director or stockholder thereof while acting within the scope of his duties as such; (2) any organization or proprietor with respect to real estate management for the named insured;

(d) any person while using an automobile or aircraft owned by or loaned to the named insured or hired for use in behalf of the named insured and any person or organization legally responsible for the use thereof, provided the actual use of the automobile or aircraft is by the named insured or with the named insured's permission, and any executive officer, director or stockholder of the named insured with respect to the use of an automobile or aircraft not owned by the named insured in the business of the named insured. The insurance with respect to any person or organization other than the named insured does not apply under division (d) of this insuring agreement:

(1) to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any occurrence arising out of the operation thereof;

(2) with respect to any automobile or aircraft hired by or loaned to the named insured, to the owner or a lessee thereof other than the named insured, or to any agent or employee of such owner or lessee;

(3) to any manufacturer of aircraft, aircraft engines or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents, with respect to any occurrence arising out of the operation thereof.

III. *Limit of Liability—Retained Limit.*

The company's limit of liability shall be only for the ultimate net loss in excess of:

(a) the applicable limit(s) of the underlying policy(ies) listed in Schedule A hereof; or

(b) with respect to Coverage I(a) or I(b), or both combined, the greater of either:

(1) $ as the result of any one occurrence not covered by the policy(ies) so listed; or

(2) the applicable limit(s) of any other underlying insurance collectible by the insured; or

(c) with respect to Coverage I(c), $ as the result of any one occurrence not covered by the policy(ies) so listed; (herein called the retained limit) and then up to an amount not exceeding:

(d) with respect to Coverage I(a) or I(b), or both combined, $ as the result of any one occurrence; or

(e) with respect to Coverage I(c), $ as the result of any one occurrence.

There is no limit to the number of occurrences for which claims may be made hereunder, provided such occurrences happen during the policy period, except as hereinafter provided.

With respect to Coverage I(a), the liability of the company arising out of the products hazard shall not exceed $ on account of all occurrences happening during each consecutive twelve (12) months of the policy period.

With respect to Coverage I(b), the liability of the company shall not exceed $ on account of all occurrences happening during each consecutive twelve (12) months of the policy period.

With respect to Coverage I(c), the liability of the company shall not exceed $ on account of all claims or proceedings arising out of all advertising activities whenever occurring, by any media, by or on behalf of the insured, during each consecutive twelve (12) months of the policy period.

In the event of the reduction or exhaustion of the aggregate limit(s) of liability of the underlying policy(ies) listed in Schedule A by reason of losses paid thereunder, this policy (1) in the event of reduction, shall pay the excess of the reduced underlying limit; or (2) in the event of exhaustion, shall continue in force as underlying insurance.

IV. *Policy Period, Territory.*

This policy applies only to occurrences during the policy period anywhere in the world; except that, with respect to Coverage I(c), if any such occurrence began prior to the policy period and continues during or after that period, the company's liability shall be limited to that proportion of the total damages resulting therefrom which the use of injurious material or the number of injurious acts during that period bears to the aggregate use of injurious material or the total number of injurious acts.

EXCLUSIONS

This policy shall not apply:

(a) under Coverage I(a), to any obligation for which the insured or any of its insurers may be held liable under any workmen's or unemployment compensation, disability benefits or similar law, provided, however, that this exclusion does not apply to liability of others assumed by the named insured under contract;

(b) under Coverage I(b), to injury to or destruction of (1) property owned by the insured or purchased by the insured under an installment payment plan or on consignment to the insured, (2) aircraft rented to, used by or in the care, custody or control of the insured, or (3) any goods, products or containers thereof manufactured, sold, handled or distributed, or work completed by or for the insured, out of which the occurrence arises;

(c) under Coverage I(b), to liability (1) assumed by the insured under any contract for injury to or destruction of property rented to, occupied or used by or in the care, custody or control of the insured to the extent that such liability is in extension of the liability imposed upon the insured by statutory or common law, or (2) for injury to or destruction of such property, if the insured is under contract to provide insurance therefor;

(d) under Coverage I(c), to liability for (1) failure of performance of written contract, (2) infringement of registered trade mark, service mark or trade name by use thereof as the registered trade mark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans, (3) incorrect description of any article or commodity, or (4) mistake in advertised price.

CONDITIONS

A. *Premium Computation*

The premium for this policy shall be based upon the during the policy period, and shall be computed at the rate set forth in the declarations applied to each of such . The advance premium is based upon the estimated for the policy period as stated in the declarations.

(No carriage returns)

Upon expiration of this policy or its termination during the policy period, the earned premium shall be computed as thus defined. If the earned premium thus computed is more than the advance premium paid, the named insured shall immediately pay the excess to the company; if less, the company shall return the difference to the named insured; but the company shall receive and retain the annual minimum premium for each twelve (12) months of the policy period.

B. *Inspection and Audit*

The company shall be permitted at all reasonable times to inspect the insured's premises and equipment, and to examine the named insured's books and records at any time during the policy period and within three (3) years after its termination, for the purpose of determining the actual premium earned, and within three (3) years after final settlement of all claims so far as the books and records relate to any occurrences happening during the policy period.

C. *Severability of Interests*

Except with respect to liability assumed by the insured under contract, the term "insured" is used severally and not collectively, but the inclusion in this policy of more than one insured shall not operate to increase the limits of the company's liability.

D. *Other Definitions*

(a) "Personal injury" means (1) bodily injury, sickness, disease, disability, shock, mental anguish and mental injury; (2) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution or humiliation; (3) libel, slander, defamation of character or invasion of rights of privacy, unless arising out of any advertising activities; (4) racial or religious discrimination not committed by or at the direction of the insured; and (5) assault and battery not committed by or at the direction of the insured, unless committed for the purpose of preventing or eliminating danger in the operation of aircraft or for the purpose of protecting the property of the insured or the person or property of others.

(b) "Automobile" means a land motor vehicle, trailer or semi-trailer.

(c) "Ultimate net loss" means the sum actually paid in cash in the settlement or satisfaction of losses for which the insured is liable, either by adjudication or compromise with the written consent of the company, after making proper deductions for all recoveries and salvages collectible, but excludes all salaries of employees and office expenses of the insured incurred in investigation, adjustment and litigation.

Nothing herein requires the insured to enforce by legal action any rights of subrogation before the company shall pay any loss for which it may be liable hereunder.

Except as provided in Insuring Agreement III as to the exhaustion of aggregate limit(s) of underlying policy(ies) listed in Schedule A, or in Condition L, other loss expenses and legal expenses (including attorney's fees, court costs and interest on any judgment or award) incurred with the consent of the company shall be apportioned in proportion to the respective interests as finally determined.

(d) "Products hazard" means

(1) the handling or use of or the existence of any condition in or a warranty of goods or products manufactured, sold, handled or distributed by the named insured or by others trading under its name, if the occurrence happens after possession of such goods or products has been relinquished to others by the named insured or by others trading under its name and if such occurrence happens away from premises owned by, rented to or controlled by the named insured; provided, such goods or products shall be deemed to include any container thereof, other than a vehicle, but shall not include any vending machine or any property, other than such container, rented to or located for use of others but not sold; or

(2) operations, if the occurrence happens after such operations have been completed or abandoned and happens away from premises owned by, rented to or controlled by the named insured; provided, operations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to an agreement; provided further, the

following shall not be deemed to be "operations" within the meaning of this paragraph: (aa) pick-up or delivery, except from or onto a railroad car, (bb) the maintenance of vehicles owned or used by or in behalf of the insured, (cc) the existence of tools, uninstalled equipment and abandoned or unused materials.

(e) Occurrence. With respect to Coverage I(b), "occurrence" means either an accident happening during the policy period or a continuous or repeated exposure to conditions which unexpectedly and unintentionally causes injury to or destruction of property during the policy period. All damages arising out of such exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

With respect to Coverage I(c), all damages involving the same injurious material or act, regardless of the frequency of repetition thereof, the number or kind of media used, and the number of claimants shall be deemed to arise out of one "occurrence."

E. *Notice of Occurrence*

Upon the happening of an occurrence reasonably likely to involve the company hereunder, written notice shall be given as soon as practicable to the company or any of its authorized agents. Such notice shall contain particulars sufficient to identify the insured and the fullest information obtainable at the time.

The insured shall give like notice of any claim made on account of such occurrence. If legal proceedings are begun the insured, when requested by the company, shall forward to it each paper thereon, or a copy thereof, received by the insured or the insured's representatives, together with copies of reports of investigations made by the insured with respect to such claim proceedings.

F. *Assistance and Co-operation*

Except as provided in Insuring Agreement III with respect to the exhaustion of the aggregate limit(s) of underlying policy(ies) listed in Schedule A, or in Condition L, the company shall not be called upon to assume charge of the settlement or defense of any claim made or proceeding instituted against the insured; but the company shall have the right and opportunity to associate with the insured in the defense and control of any claim or proceeding reasonably likely to involve the company. In such event the insured and the company shall cooperate fully.

G. *Legal Costs*

Should any claim(s) arising out of one occurrence appear likely to exceed the retained limit, no legal costs shall be incurred on behalf of the company without its prior consent. Should such claim(s) be adjusted prior to trial court judgment(s) for a total amount of not more than the retained limit, then no legal costs shall be payable by the company. However, should the total amount for which such claim(s) might be adjusted prior to such judgment(s) exceed the retained limit, then, except as provided in Insuring Agreement III as to exhaustion of aggregate limits of underlying policy(ies) listed in Schedule A, or in Condition L, if the company consents to further trial court proceedings, it shall contribute to the legal costs in the ratio that its proportion of the liability for the judgment(s) rendered, or settlement(s) made, bears to the whole amount of said judgment(s) or settlement(s).

H. *Appeals*

In the event the insured or the insured's underlying insurer elects not to appeal a judgment in excess of the retained limit, the company may elect to do so at its own expense, and shall be liable for the taxable costs, disbursements and interest incidental thereto, but in no event shall the liability of the company for ultimate net loss exceed the amount set forth in Insuring Agreement III for any one occurrence plus the taxable costs, disbursements and interest incidental to such appeal.

I. *Loss Payable*

Liability of the company with respect to any one occurrence shall not attach unless and until the insured, or the insured's underlying insurer, has paid the amount of retained limit. The insured shall make a definite claim for any loss for which the company may be liable within twelve (12) months after the insured shall have paid an amount of ultimate net loss in excess of the amount borne by the insured or after the insured's liability shall have been made certain by final judgment against the insured after actual trial, or by written agreement of the insured, the claimant, and the company. If any subsequent payments are made by the insured on account of the same occurrence, additional claims shall be made similarly from time to time and shall be payable within thirty (30) days after proof in conformity with this policy.

J. *Bankruptcy or Insolvency*

Bankruptcy or insolvency of the insured shall not relieve the company of any of its obligations hereunder.

K. *Other Insurance*

If other collectible insurance with any other insurer is available to the insured covering a loss also covered hereunder (except insurance purchased to apply in excess of the sum of the retained limit and the limit of liability hereunder) the insurance hereunder shall be in excess of, and not contribute with, such other insurance. If the insured carries other insurance with the company covering a loss also covered by this policy (other than underlying insurance of which the insurance afforded by this policy is in excess) the insured must elect which policy shall apply and the company shall be liable under the policy so elected and shall not be liable under any other policy.

L. *Underlying Insurance*

This policy shall not apply to investigation or legal expenses for which insurance is provided by underlying insurance. If such underlying insurance is exhausted by any occurrence, the company shall be obligated to assume charge of the settlement or defense of any claim or proceeding against the insured resulting from the same occurrence, but only where this policy applies immediately in excess of such underlying insurance, without the intervention of any self-insurance or excess insurance of another carrier.

M. *Subrogation*

The company shall be subrogated to the extent of any payment hereunder to all the insured's rights of recovery therefor; and the insured shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the insured's) having paid an amount in excess of the retained limit plus the limit of liability hereunder shall be reimbursed first to the extent of actual payment. The company shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the insured or any underlying insurer, as their interests may appear. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the company, it shall bear the expenses thereof. The insured shall do nothing after loss to prejudice such rights.

N. *Arbitration*

Except with respect to liability assumed by the insured under a lease of premises, easement agreement, agreement required by municipal ordinance, sidetrack agreement or elevator or escalator maintenance agreement, the company shall not be liable under this policy for damages awarded in arbitration other than an arbitration proceeding wherein an indemnitee under a written contract or agreement seeks damages against the insured on account thereof and wherein the company is entitled

to exercise the insured's rights in the choice of arbitrators and in the conduct of such arbitration proceedings.

O. *Changes*

Notice to or knowledge of any agent or other person shall not effect a waiver or change any part of this policy nor estop the company from asserting any right under it, nor shall the terms of this policy be waived or changed except by endorsement hereon.

P. *Assignment*

Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon. If, however, the insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless canceled, shall cover the insured's legal representative for the unexpired portion of such period.

Q. *Cancellation*

This policy may be canceled by the named insured by surrender thereof to the company or any of its authorized agents, or by mailing to the company written notice stating when thereafter such cancellation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing. If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata.

Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter. The check of the company or its representative, mailed or delivered, shall be sufficient tender of any refund due the named insured.

If this policy insures more than one named insured, cancellation may be effected by the first of such named insureds for the account of all insureds; and notice of cancellation by the company to such first named insured shall be notice to all insureds. Payment of any unearned premium to such first named insured shall be for the account of all interests therein.

R. *Maintenance of Underlying Insurance*

It is warranted by the insured that the underlying policy(ies) listed in Schedule A, or renewals or replacements thereof not more restricted, shall be maintained in force during the currency of this policy, except for any reduction of the aggregate limit(s) contained therein solely by payment of claims in respect of occurrences happening during the policy period. In the event of failure by the insured so to maintain such policy(ies) in force, the insurance afforded by this policy shall apply in the same manner it would have applied had such policy(ies) been so maintained in force.

S. *Employers' Liability—Common Law Defenses*

As a condition to the recovery of any loss under this policy, with respect to personal injury to or the death of any employee(s) arising out of and in the course of employment by the named insured, the named insured warrants that it has not and will not abrogate its common law defenses under any workmen's compensation law by rejection thereof, or otherwise. In the event the named insured should, at any time during the policy period, abrogate such defenses, such insurance as is afforded by Coverage I(a) with respect to such employee(s) shall automatically terminate at the same time.

PROPERTY AND LIABILITY INSURANCE HANDBOOK

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Chapter 40

EXCESS LIABILITY, UMBRELLA, AGGREGATES, AND DEDUCTIBLES

BY BERNARD J. DAENZER

The matter of obtaining insurance above the conventional liability limits, the technique of removing gaps in liability insurance protection, the use of deductibles, and the emergence of contracts which provide both liability and physical damage insurance are treated in this chapter.

THE TREND TOWARD SEPARATE EXCESSES

Since World War II there has been a growing tendency toward the purchase of separate "excess liability insurance contracts." This term is industry jargon for a liability insurance contract which pays, up to a maximum, liability claims against an insured but only to the extent each claim exceeds some specified limit of primary insurance or "self-insured" retention. Prior to the war, there was a complacency about limits with very few demands from the public or from producers beyond $100,000 per person and $300,000 per accident for bodily injury and $50,000 per accident for property damage. Rarely was the treaty capacity of the insurance carrier exceeded. Few Lloyd's excesses were placed. The change beginning in the early 1940's arose for several reasons explained below.

Size of Verdicts

An insured cannot pick his claimants. The injured party may turn out to be a professional golfer, entertainer, or rising young executive with an annual income of $50,000 or more. Nor can the insured pick the kind of injury which will develop. There may be serious injury to the brain; the spine may be damaged beyond repair. Medical bills alone may run into hundreds of thousands of dollars. The insured cannot predict the size of his property damage exposure. His vehicle may hit a train and cause

derailment. The vehicle may hit the side of a building on stilts and cause the entire structure to sag. A negligent fire may spread to 20 buildings. Widespread catastrophic liability may result from the sale of a simple toy which is toxic.

Furthermore, the insured cannot anticipate what a jury is going to do. The size of verdicts has been leapfrogging during the last two decades. The *Fire, Casualty, and Surety Bulletins* of the National Underwriter Company present an up-to-date record of the highest judgments recorded for personal injury to one person in each state. Some of the currently high verdicts are:

New Jersey	$1,215,140
New York	1,100,000
Illinois	750,000
California	650,000
Oklahoma	650,000
Ohio	625,000
Florida	550,000
Michigan	526,000
Minnesota	500,000
Delaware	470,000

The limit required for all the settlements in a single accident can be astronomical. Consider an explosion in Oregon which involved only one truck but which killed 12 persons, injured over 100 others, and caused estimated property damage of $9,300,000. Consider the protection needed when an oil truck hit the Santa Fe Chief near Bakersfield. Fourteen persons were killed and the train was derailed. As another example, how high is "up" really becomes a problem for the manufacturer of a component for a missile. If a missile were to go off course and hit an American city and if the defective component were to be traced to one manufacturer, his need for liability insurance would be astronomically large. Expansion in manufacturing, contracting operations, aviation, utilities, and electronics opens up a vista of many times the maximum of 20, 30, or even 40 million now pyramided into a large liability program.

Claims in Excess of Policy Limits

With the rise of verdicts at all levels in all states, plaintiffs' attorneys have become accustomed to demanding enormous dollar figures for damages. When the damage clause in a complaint exceeds the policy limits, it is necessary for the insurance company to notify the insured that any excess eventually needed will have to be paid by him. To say the least, this notification creates a very uncomfortable feeling in the insured, his producer, and his professional counselor.

Actual settlements can be very embarrassing as in the case of the millionaire who, with limits of only $5,000/$10,000, was involved in a very serious accident in which the driver of the other vehicle was killed.

Another example was a successful and wealthy contractor with only $25,000 per person and $50,000 per accident in his bodily injury coverage who faced a verdict of $250,000. In many business cases the contribution needed from the insured firm was the death knell of the business; many other insureds have had to do very costly financing in order to avoid bankruptcy and stay in business.

Liability Treaty Limitations

In seeking higher limits, brokers and agents found that many insurance carriers had insufficient liability capacity. In many cases the insurer had to be persuaded to place facultative reinsurance for a very high limit, which placement was costly to the company. In addition, unless such an insurer had a large volume of high-limit business, it could not get a spread of such business and participate in the premium for the excess. Some company officials felt that they should not be involved at the primary level with frequency of loss and also be involved in high limits for catastrophe. It is interesting that Lloyd's underwriters are divided, with individual syndicates having preferences for different levels of liability. The frequency underwriters choose one layer; catastrophe underwriters choose other layers.

Broader Coverage with Low Limits

A company underwriter will have more courage to take on difficult classes (such as products liability with a "batch" exposure; completed operations liability for contractors; premises-operations liability for hotels, rooming houses, theaters, skating rinks, or swimming pools; or liability for trucking risks) if he knows that he is only involved to the extent of $10,000/$20,000 for B.I. and $20,000 P.D. or perhaps $25,000/$50,000 and $25,000 respectively. It may also be possible for the producer to negotiate a broader wording with respect to (1) care, custody, or control, (2) blanket contractual, or (3) occurrence type property damage, if the underwriter knows that he has only a low limit. (See Chapter 32 for discussion of 1 and 3.) This broader wording may be easier to obtain if the entire first layer of coverage is on a retrospective rating plan. The producer of the business or the buyer may then find it easier to buy his excess separately. The excess contract can follow the same conditions as in the primary contract.

Agency Experience and Individual Risk Experience

Insurance company officials have a tendency to look at their entire book of business from a producer and not distinguish clearly between severity of loss and frequency of loss. They often make statistical studies which will simply show the overall loss ratio of each agency involved. Moreover, many insurers use a contingent commission system under which the agent may get from the insurance carrier an additional commission in case the business he has produced proves profitable. If very large limits are written and a fortuitious loss occurs, this loss may prejudice the record of the agency and the possibility of the collection of contingent commissions. With respect to the buyer, there is also the problem of individual risk experience. If the experience under the primary contract is bad because of frequency of loss, it will affect the cost of the excess insurance in the same carrier, since the excess will normally be calculated as a percentage of the primary cover. If the excess is purchased separately and rated independently, its price may not be affected by the experience of the insured under his primary policy.

Convenience of Handling

An insured may have separate liability contracts in various states. He may have different contracts for different subsidiaries. He may have uneven limits for automobile, comprehensive general liability, aviation, malpractice, and perhaps the section of a package policy which includes premises liability. The insured can bulk-buy one combined single limit for bodily injury and property damage which will be excess over all of the individual policies and bring his limit up to one amount commensurate with his needs. There is often a price advantage to a combined single limit and there may be additional savings in "layering" (this concept is also discussed in Chapter 22) if the insured needs many millions of coverage.

EXCESS LIABILITY

Excess liability insurance provides coverage above some specified figure up to some specified limit. For example, such a contract may provide payment to the extent that a bodily injury claim exceeds $20,000/$40,000 up to $100,000/$300,000.

A straightforward excess liability policy must be distinguished from umbrella liability and from excess aggregate liability policies. Umbrella liability is a broad blanket excess legal liability contract which "picks up" over a self-insured portion the gaps in the liability program of an insured. Excess aggregate is available for self-insurers and provides a liability cover for all losses in one policy year up to an aggregate amount over an aggregate deductible for the year. (See section in this chapter on "Nature of Excess Aggregate Contracts.")

Excess Never Wider than Primary

Excess liability as such is never wider than the basic coverage. It is only excess "as covered by and defined in the primary policies." In fact, the excess cover may be more narrow than the primary. For example, stand-

ard policies developed at Lloyd's and in domestic companies make it quite clear in the exclusions that if the primary policy has been extended in any way to cover care, custody, or control (other than that picked up in sidetrack agreements or in the elevator coverage) or has been extended in any way to cover workmen's compensation and employers' liability exposures, the excess does not cover unless a proper endorsement is issued. Excess liability wordings vary by company. It is necessary that the producer or the buyer make certain that there are no exclusions in the excess cover which would curtail the breadth of coverage desired for full limits.

One or Several Excess Contracts

A separate excess may be written over each policy. The most frequent type of excess is an ordinary automobile excess liability cover. The wide use of assigned risk plans, where only minimum amounts of primary insurance are granted, make necessary a market for higher limits at adequate rates. Amounts up to $100,000/$300,000 may be purchased rather readily at fairly standardized rates. Excesses are available not only for assigned risks, but also for youngsters, military personnel, those with physical impairments, the over-age, those with poor driving record, those with actual loss experience, the immigrants, and the difficult occupational groups. These groups include bartenders, actors, actresses, gamblers, musicians, waterfront workers, circus and carnival people, migratory workers, and others.

It is usually better to arrange the excess policy for a commercial client so that it does go over *all* of the policies he holds, even though these policies may cover different types of hazards and may have different limits. Originally, limits were shown as a dollar amount excess of a dollar amount, for example, bodily injury $75,000/$250,000 excess of $25,000/$50,000 and property damage $75,000 excess of $25,000. Misunderstandings arose. It was found better to show the total limits and indicate that the company is covering the difference between those total limits and the primary limits. Standard wordings at Lloyd's have been drawn in this way so that the total limits in the excess contract are the summation of the primary, the underlying layers, and the excess being written in the contract. Continuing the example, the limits in the excess contract would be "100/300/100" in all over (primary of "5/10/5" and a second layer of "20/40/20").

There is no problem in having a combined single limit for both bodily injury and property damage instead of separate limits as expressed above. Even though the primary policies have split limits for bodily injury and property damage and split limits per person and per accident in the individual policies, the excess may be expressed as a single combined limit for both bodily injury and property damage. For example, $1 million, $2 million, or $5 million, with the difference between that limit and any of the primary covers protected. Ordinarily, savings will result from the use of a combined single limit. Moreover, the insured then knows his top dollar limit for any one incident.

Pricing of Excess Liability

For all of the difficult classes, excess limits both at Lloyd's and in domestic companies will cost more than the cost as figured by use of ordinary excess tables contained in the bureau manuals. The biggest difference in price is in the area between $10,000/$20,000/$10,000 and $25,000/$50,000/$25,000. The spread in pricing decreases as the limits go up. At higher limits the cost per $1,000 may go down from a dollar per $1,000 to as little as 30 cents per $1,000. Malpractice excess limits are separately priced and are extremely costly because of the trend in the last few years in malpractice verdicts. (See Chapter 33 for a discussion of malpractice liability insurance.)

The cost of excess layers may be subject to adjustment and, if so, the adjustment will always relate to the primary limits. The final factor which is quoted on each excess layer is not related back to the premium for a primary of $5,000/$10,000 for bodily injury but always to the full premium for the first primary layer whether it is $10,000/$20,000, $25,000/$50,000, $50,000/$100,000, $100,000/$300,000, and so on.

Wherever the primary limit is written as an aggregate (as for example in products-completed operations), the excess is also written as an aggregate. (See Chapters 32 and 34 for discussion of aggregate limits.) This practice may also be followed in coverages for errors and omissions or malpractice.

It is necessary to notify the underwriters on the excess layers if there is any change in the primary premium or in the underlying excess layers, if any. Notice should be given of any incident which is likely to give rise to a claim to the excess underwriters. They must give consent to costs which might affect them. If the total claim involves the excess layers, all of the costs are split proportionately and the underwriters on the upper layers have a right to be in on the handling of the case if it is going to affect them.

UMBRELLA LIABILITY

Development of the Contract

The appearance of the "umbrella" was an outstanding, unique event in the brief history of excess liability insurance.

According to a research study project of the Northern California Chapter of the Society of Chartered Property and Casualty Underwriters, um-

brella liability was introduced in the United States in 1947.[1] The wording reflected a considerable amount of imagination and courage on the part of Lloyd's underwriters. The contract was aimed at large buyers of insurance with the idea of providing broader protection with the new concept of picking up all of the gaps in other coverages—over a self-insured retention by the insured.

The new contract served almost as an errors and omissions policy for any exposure which may have been overlooked. The umbrella "backstopped" all of the individual policies. Thus, if there were a gap resulting from a policy exclusion or a missing policy, the capital and surplus of the insured had at least catastrophe protection over the self-insured amount —which was usually pegged at $25,000. The insurer often required that the primary coverages be brought up to date and properly broadened before the umbrella was added. Thus, the umbrella program had the effect of forcing the insured or his advisor to scrutinize every liability contract—automobile, comprehensive general, aviation, watercraft, advertiser's liability, errors and omissions, malpractice, bailee liability coverages, and others.

In 1959 the Lloyd's program ran into trouble. Two things had gone wrong. First, in the sale of the umbrella the technique had been used of reducing the primary bodily injury limits to $25,000 per person and $50,000 per accident, or even less. The idea was to reduce the primary limits sufficiently so that the savings in the reduction of limits would largely pay for the umbrella. The premium level became too thin and the reduction in limits put the coverage in the working area of frequency of loss instead of the area of catastrophe. Second, the wording was made so broad that it picked up many exposures which were not contemplated. It was even found that some large suits for patent infringement developed where the insured might have known of the possibility of patent infringement at the time the insurance was placed. Tort actions for willful perpetuation of nuisances, trespass, and unfair business practices were included. Contractual guarantees on a number of risks of "just doing business" were interpreted as covered.

In June, 1960, Lloyd's consulted with many brokers and developed a new contract. Some domestic carriers followed the new Lloyd's pattern; others created contracts of their own which followed the American wordings in other liability policies and further tightened certain areas. With no standard contract in the United States, each company's policy must be examined to make sure that it is truly broad-form umbrella insurance and not merely an ordinary excess liability contract. Permission was granted for a dropping down of the self-insured retention in the gaps area to

[1] For an excellent report of this study group, see "Umbrella Liability Coverage," *Annals, Society of CPCU*, Vol. 13 (Winter, 1960), pp. 243–74.

$10,000. Defense protection was granted in these areas under the deductible without charge to the insured. A separate contract was devised for the liabilities of executives in business and for professionals.

A Few Basic Points about the Umbrella

Some basic points apply to all umbrellas. First, the umbrella is not "level at the top." A few companies have written "difference between" contracts similar to the wording mentioned under excess liability, but the vast majority of umbrellas follows the underlying coverages in their peaks and valleys. There is always one million, or five million, or ten million more than each specific basic limit. If there is an aggregate in the primary liability such as in the products liability section, the umbrella becomes primary when the aggregate is exhausted.

Second, a common misunderstanding is that there is a $25,000 or $10,000 gap or space between the primary and the umbrella insurance. No such corridor exists. In those areas where the insured has purchased a primary cover, the protection applies right up to the top dollar of the umbrella. Most umbrellas have very few absolute exclusions. The usual ones are: war, product guarantees, performance guarantees, faulty workmanship, and certain things with respect to advertising such as a mistake in the advertised price, an incorrect description, a failure to perform the contract resulting from an ad, or a trademark infringement. The statutory part of workmen's compensation is excluded unless excess workmen's compensation coverage over a self-insured portion is endorsed onto the contract.

The third important feature of the umbrella is that it drops down to $25,000 or $10,000 in those areas which are not covered in the primary. This feature means that (1) coverage which would otherwise have required separate policies is picked up and (2) that exclusions in primary coverage are in effect eliminated for losses above $10,000 or $25,000. Most umbrella insurers safeguard themselves by having certain exclusions which will apply if the underlying insurances are missing, for example, assault and battery at the direction of the insured, owned aircraft, owned watercraft, and suits by one employee against another employee. If the primary policies pick up these exposures, however, they are also covered in the umbrella.

Fourth, as a general rule most excess insurers insist on a full Comprehensive General Liability Policy on the bottom before writing the umbrella. There are cases, however, where there may be difficult products exposures, difficult completed operations, or difficulties with respect to blanket contractual or occurrence P.D. where the carrier will purposely write the umbrella with the insured retaining the first layer. Such a carrier may require a retention of $50,000 or $100,000 on very large lines.

An Example

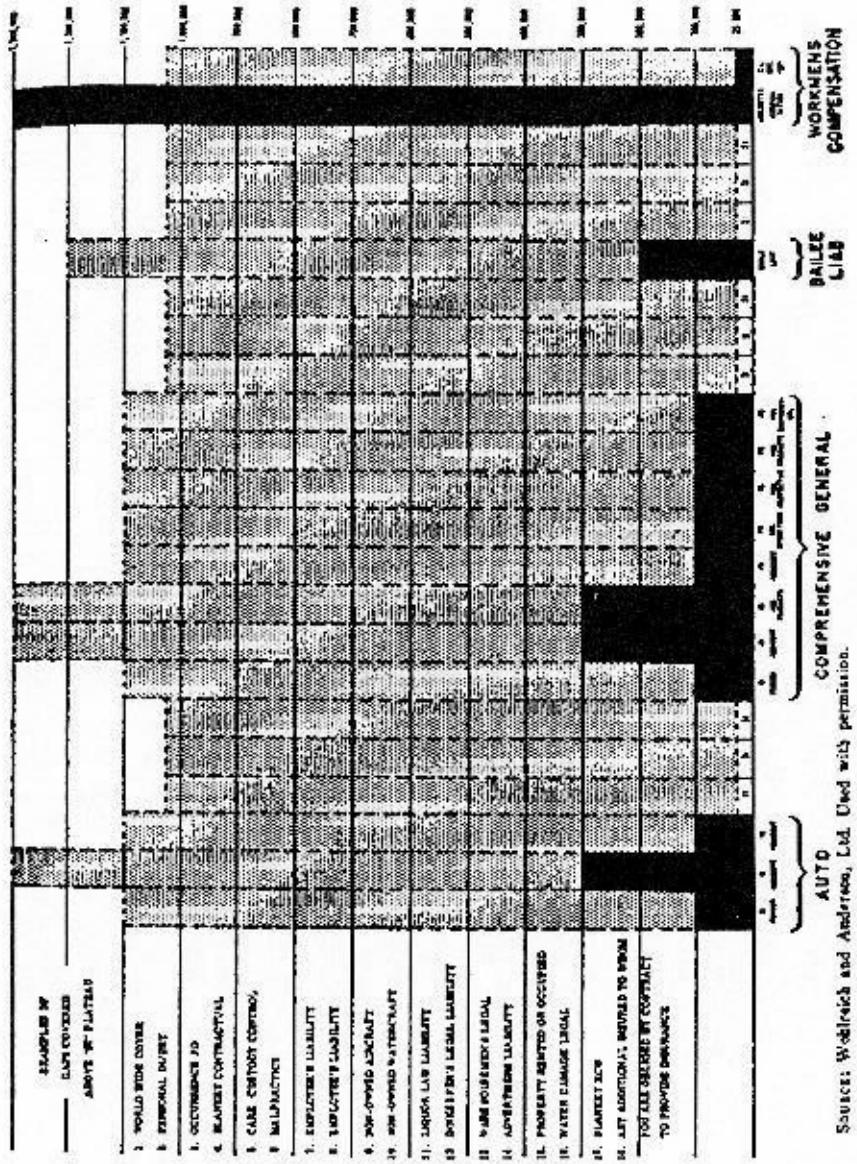
One can appreciate the breadth of the contract only if he comprehends the entire risk. Figure 40–1 shows a sample program for a commercial client. It is presumed that this client is carrying $100,000/$300,000 on automobile, $100,000/$300,000/$300,000 aggregate on products for bodily injury in the Comprehensive General, and $100,000 property damage with the various aggregates in the normal contract. It is further presumed that the client has insurance of $200,000 for a bailee exposure where property of others is in its custody. Finally, in its workmen's compensation policy, which is unlimited on the statutory part, a limit of $25,000 on section B is presumed. The umbrella is represented in the chart by the gray shaded area which provides excess over the primaries and then picks up excess over the self-insured (S.I.) portion which is shown in white at the bottom as possible exclusions or missing policies. In the list on the left-hand side of the chart are simply examples of the gaps covered above the self-insured plateau which in this instance has been pegged at $25,000.

Examples of Uses of the Umbrella Contract

Since uses of the umbrella may be unfamiliar to numerous readers, some examples of the need for this type of insurance are cited.

World Wide Cover. Even modest size commercial firms today set up sales offices in Europe, the Far East, or Africa. They may send employees abroad to check on installations or the performance of their product. They definitely have products liability exposures when their products go, say, to the Philippines, Japan, or central Europe. Unfortunately, many insureds fail to advise their broker, agent, or company when they start trading abroad. The umbrella does provide a catastrophe protection over the self-insured amount for the firm. The ordinary Comprehensive General or Comprehensive Automobile Liability Policies do not follow them abroad. The products exposure can be dangerously large with different climates and different types of employees or agents.

Personal Injury. Legal liability for *bodily* injury from negligence is only one type of tort. The term "personal injury" opens up the whole book of torts. (See Chapters 31, 32, 33, and 34 for information pertinent to this point.) It includes mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination, humiliation, libel, slander, defamation of character, invasion of privacy, and so on. False arrest and wrongful detention are especially important for department stores, discount houses, supermarkets, hotels, and municipalities. There have even been suits for wrongful detention where someone has been locked in a warehouse in error. Discrimination, humiliation, and invasion of privacy can be ex-



Source: Wolfrich and Andrews, Ltd. Used with permission.

FIG. 40–1. Umbrella Liability.

tremely important for theaters, hotels, restaurants, supermarkets, and the entire communications industry. Real estate firms have a special problem in this regard. Credit, racial, or religious questions may arise in any business. A good example of a defamation of character claim arose in the milling business where an insured wrote a dismissal letter which resulted in a claim for $30,000 because of the employment difficulties of the claimant. Infringement of patents is no longer in the umbrella but there is infringement of copyright, title, or slogan in connection with all advertising activities.

Insurers now so define personal injury in their contracts that they do not get involved in the willful torts mentioned earlier which beset the first umbrella contracts.

Occurrence PD. Occurrence PD claims, and care, custody, or control claims are the two big gaps covered by the umbrella. Catastrophe protection is needed in each area. For example, a metallurgical firm had sulphur-dioxide gas emitting from its stacks. The smoke over a period of time caused damage to growing crops in the area. This damage was not sudden nor fixed in time or place; therefore it did not arise from an *accident* but was an *occurrence* within the definition. It was not covered by the Comprehensive General Liability Policy, but the case was settled for about $100,000 in excess of the self-insured retention of $25,000. As another example, a contractor started pumping out water in the construction of a hotel near a lagoon. He thought the water was coming from the lagoon. In fact, he was changing the water table. Other structures along a main street began to sag. Claims for the change in water level and its effect on neighboring lands ran into eight figures. This example suggests that a $25 million limit may be advisable in some cases. In another case tar paper was sold to a chain of supermarkets. Felt and coal tarpitch emitted such a strong order that foodstuffs were condemned over a period of time. The condemnation resulted in a claim for $500,000.

Mining companies and chemical companies which have to pile huge waste products have had tremendous losses when heavy rains over a period of time have washed down chemicals or debris into neighboring farms. A manufacturer may provide a small unit intended for use in a large generator, a delicate piece of machinery, a vehicle, a boat, or a plane. Over a period of time the entire larger mechanism may be ruined and may have to be replaced should the small unit be defective. Such a claim would not be an "accident" claim but rather an "occurrence" products liability claim.

Blanket Contractual. The general counsel of a company may not clear all contracts with the insurance company, the broker, or the consultant. Even if the general counsel agrees to do so, the sales department or the manufacturing department may not clear all contracts with the general counsel. Primary carriers most frequently restrict contractual liability

because of the very wide exposure possible. A contract can pick up the liability of others, workmen's compensation exposures, and tremendous property damage exposures. A contractor in one large city ended up by holding the entire city harmless from all accidents on streets and sidewalks. Under the umbrella the coverage is there, whether the contract is oral or written.

Care, Custody, or Control. Courts are not dependable in what they construe as being in the care, custody, or control of an insured. A firm may discover that it has in its custody an entire building, expensive data processing machinery, leased machinery and equipment, property sent on consignment, property stored under a bailment, or property under construction. Even property under installation at far distances may be under its custody.

A careful review of the underlying insurance is made by the umbrella underwriter, but one can never anticipate what will develop. On one occasion the upper section of a catalytic cracking tower partially collapsed and deflected some 15 degrees after which fire ensued. While there was builder's risk coverage, it did not include testing. It was held that the accident did occur during testing and a loss was paid for about $400,000 over $25,000. Unusual lease wordings and unusual lease-back arrangements are danger points in every commercial concern. There is an interesting question as to whether or not a real estate firm has custody of the houses to which it has keys. Many firms are very casual in their arrangements with sub-contractors. It may be very difficult to determine who has the custody of the property until actual litigation. Companies today have a tendency to switch from owned equipment to leased equipment without full analysis of their exposures.

Malpractice. A large insured may operate a hospital and buy specific coverage for malpractice. A small insured may just have a first aid facility, simply hire a doctor or a nurse, or refer patients to a doctor or a nurse outside the premises, and not think about having malpractice coverage. The umbrella contract applies above the self-insured limit.

Moreover, insurers may have professional liability exposures which they least suspect. Courts today are holding many types of insureds responsible for their errors or omissions. Personal injury or property damage resulting from improper or inadequate performance, design, faults, or specification inadequacy is covered.

Employer's Liability. Many large insureds carry only $25,000 on Section B of their workmen's compensation policy. Many others increase it only to $100,000. There may still be gaps with respect to foreign operations, or to employees in certain monopolistic state fund states. Although claims are rare, catastrophe limits may be necessary for (1) casual employees excluded from statutory coverage in certain states, (2) occupational diseases not listed in some states, (3) loss of hearing,

(4) loss of consortium, and (5) the "third-party-over" situation where a third party sued by a firm's employee brings the insured in as the employer. Substantial recoveries may be gained by changing the nature of the claim from workmen's compensation to third party liability through this device. Courts have upheld the right of the third party to sue and recover from the employer of the injured person the amount of damages the third party sustained in the action brought by the injured person.[2]

Employee's Liability. An employee becomes a named insured in the umbrella policy. He may be sued individually. If he has no other protection for his business pursuits as an extension to a Comprehensive Personal Liability Policy, he at least has the coverage excess of the self-insured deductible. This feature is extremely important where the umbrella provides defense for such claims. The insurer automatically covers all of the costs of litigation, which sums can be substantial. For example, the operator of a large crane can punch a hole in a ship or the side of a building. A nurse employed may be sued for malpractice. Some umbrellas even pick up the coverage for fellow-employee suits, but even where done this has been limited to claims other than those in respect to automobiles and aircraft. There is a great danger that any coverage in this area will start a trend toward suits by one employee against another, and militate against the injured employee's taking compensation in a case where there has been the careless act of some other employee on the job. Many claims men feel that compensation should be the exclusive remedy and that an injured employee should not be encouraged to bring an action against a fellow employee.

Nonowned Aircraft. If companies do not own aircraft, officials usually forget about the nonownership aspect of aircraft liability. It is not picked up in the normal Comprehensive General Liability Policy. Management may even decide to send a memo around advising everyone not to fly a plane nor to rent a plane and take the responsibility for the craft. Even the best memo, however, does not stop a new salesman who knows how to fly from, say, renting a plane and covering West Virginia out of Washington, D.C. He can destroy a school, a theater, a church, or other property. As the result, a substantial amount of the capital and surplus of the corporation can be wiped out. It has been found that employees in contracting, financing, manufacturing, retailing, wholesaling, and certain other firms do on occasion rent private planes. If such renting is an activity in the course of normal employment, the company can be held responsible.

Nonowned Watercraft. Again, because watercraft is not owned, the exposure from rental of watercraft may be forgotten. The sales manager

[2] See: *Westchester Lighting Co. v. Westchester County Small Estates Corp.*, 278 NY 175 (1938); *American District Telegraph Company v. Kittleson*, 179 Fed. 2d 946 (1950); *Ryan Stevedoring Company v. Pan Atlantic SS Corp.*, 350 U.S. 124, (1956); *General Electric Company v. Moretz*, 270 Fed. 2d 780 (1959).

may charter a boat and take a number of customers on a fishing trip. If they drown and it is shown that the salesman was negligent in either the selection or operation of the vessel, there may be a substantial invasion of capital and surplus through satisfaction of the resulting judgment. If these costs of using such watercraft are usually put through as business expenses, it would be hard to show that the activities were not in the course of business.

Liquor Law Liability. "Dram shop" liability may be excluded from primary insurance such as treated in Chapters 32 and 34. In certain states, if a person who has been served on the premises injures someone while intoxicated, the owner or operator of the premises may be brought into the suit as a defendant. The premises need not be a hotel, restaurant, or tavern operation. Various other types of premises used for such purposes come under the exclusion of the basic policy.

Innkeeper's Legal Liability. Exposures under this heading actually are in the area of care, custody, or control but have a special importance because of statutory and common law. This liability is particularly important to hotels, restaurants, public halls, catering places, theaters, galleries, motels, apartment hotels, churches, clubs, exhibitions, and amusement places. Such liability is, of course, picked up (above the self-insured limit) in the umbrella.

Warehousemen's Legal Liability. This exposure is also in the area of care, custody, or control but likewise has a special legal aspect where the insured has been construed to be a warehouseman in respect to the property of others. Warehousemen are being held by the courts to a degree of duty which makes them almost guarantors of the property on their premises. Catastrophe liability can result from a negligent fire. In one example such a fire was started by the watchman himself with a carelessly tossed cigarette. In another situation a fire resulted from explosion where paints and chemicals were in proximity to heat. In one case the warehouse and its contents gently subsided into the filled ground of mud. The umbrella can cover this liability regardless of the cause of the property damage—except for the few exclusions cited early in this discussion.

Advertiser's Liability. The mere fact that a concern uses neither radio nor TV does not mean that it is immune from suits for serious exposures in advertising. Even if the firm uses only a simple system of advertising in newspapers, magazine, handbills, or pamphlets, there can be suits for libel; slander; defamation; infringement of copyright, title, or slogan; unfair competition; idea misappropriation; or invasion of the right of privacy. The cost of defense can be enormous. With radio or TV, separate acts can be committed simultaneously throughout the country and a firm may be suddenly faced with 25 or 30 suits in separate jurisdictions at the

same time. This exposure can be handled with an umbrella contract.

Property Rented or Occupied. The basic CGL Policy excludes property owned by, occupied by, or rented to the insured. While the property owned is not covered under the umbrella (since the insured cannot sue himself) legal claims for loss of or damage to the property occupied or rented are covered by the umbrella and can be very important. Unless the counsel for the company has taken care of all of the premises which are occupied by the insured, the company may be exposed to substantial claim when a building is destroyed and the company is responsible.

Water Damage Legal Liability and Sprinkler Leakage Legal Liability. The normal CGL Policy has an exclusion with reference to water pipes, steam pipes, air-conditioning systems, industrial appliances, sprinkler systems, tanks, rain, or snow. If separate water damage legal liability and sprinkler leakage legal liability are not purchased, the umbrella will pick up the exposure which is in excess of the self-insured amount. A sales office in a huge multi-tenanted building may have 10 stories below it. If there is negligence and a burst pipe results in water flowing down over a long holiday weekend, a million dollar loss can occur. The exact amount of one water damage legal liability loss was $962,000.

Blanket "XC&U." Unless specifically endorsed, the Comprehensive General Liability Policy does not cover a contractor for blasting, collapse, or underground damage. If a new job is taken on which involves any of these exposures, the only protection the contractor would have would be the umbrella excess.

Additional Insureds. If the named insured is obligated by contract to provide insurance to any additional insured, the umbrella policy "backstops" the insured since any person or organization enjoying a contract right to have insurance provided for him (or it) is granted coverage by the policy with respect to the operations of the insured and the facilities used by the insured.

Special Extension of Umbrella Liability

Umbrellas have sometimes been broadened to cover extensive protection and indemnity liabilities arising from shipping fleets and other marine operations. In the London market it has been called a "bumber-shoot" instead of an umbrella and picks up both the nonmarine and marine liabilities with a single limit. A frequent extension is to include excess fidelity. Again, the matter is one of bulk buying since the same capacity can be used as catastrophe protection over a blanket position bond or a commercial blanket bond. It has also been done over a banker's blanket bond.

A further refinement of umbrella extension is to have the same combined, single catastrophe limit apply (1) to a direct damage insuring clause as "balance of perils" for "all risk" including flood, earthquake, collapse, subsidence, sonic boom, wave wash, rain, and snow—all subject to a reasonable deductible—but excluding the named perils of the ordinary coverages carried by the insured and (2) to an umbrella insuring clause as described in this chapter.

Several companies provide an umbrella for the individual so that the executive, physician, surgeon, dentist, lawyer, accountant, architect, or engineer can buy a "broad-form" over his normal personal contracts. This policy does more than give prestige with its limit of a million or more in protection. Juries can hand down tremendous verdicts against individuals as well as corporations. People in the public limelight, those in any phase of entertainment business, and those who might be guilty of malpractice may need as much as a $5 million limit. There is usually a $10,000 deductible for the nonprimary coverages. Expense of defense is covered.

Rating

There is no standard rating for the umbrella. The commercial umbrella with a primary of $100,000/$300,000 and $100,000 will normally be rated for the first million at approximately 10 percent of the primary Automobile Policy premium and 20 percent of the Comprehensive General Liability Policy premium. To this may be added judgment factors according to the individual risk. There was a time when there was a minimum premium per annum of about a thousand dollars; but small commercial risks are now written with $500 as the minimum three-year premium. The personal coverage for executives and professionals for the normal risk runs $270 for three years for a million; $540 for three years for five million.

EXCESS AGGREGATES AND DEDUCTIBLES

The risk-bearing capacity of an insured is hard to determine. The minimum certainly should be 1 percent of the "free surplus" of the concern plus 1 percent of its average annual net earnings during the last five years. If the cost of standard insurance is high in relation to gross income, it may make good business sense to take a substantial deductible in relation to free surplus and earnings. Too many insureds pay enormous sums for first dollar coverage and leave themselves exposed for catastrophe. It would be better for them to have a self-insured portion on the bottom and use their money to protect themselves on the top across-the-board for all perils. With respect to third-party liability and workmen's compensation, there has been a reluctance on the part of American underwriters and insureds to have a deductible. The underwriter fears lack of control and possible failure of the insured to report a claim since he might feel that the claim would not exceed the deductible. The insured is concerned that, if the deductible includes not only the amount to be

paid the third party but also the cost of adjustment he (the insured) will not be able to control the handling by the carrier and will end up with a lot of his own money spent on small claims and adjusting expenses.

Use of Deductibles

The bulk of liability business is written without a deductible. Only when there has been an underwriting problem of frequency has a deductible been used for smaller and medium size risks. Even in these cases the business has been placed largely in the foreign market or in specialty American companies. These deductibles usually are small, for example, $100, $250, or $500. Only in respect to the very large risk is a serious approach usually taken on the part of the insured in using a "self-insurance" program. Such insureds clearly need "excess aggregate insurance" for public liability, automobile liability, and workmen's compensation exposures. These insureds may be faced with the possibility of frequency of loss. They need a stop-loss cover over an aggregate deductible. This need is over and above the catastrophe protection which ordinarily is needed for any one accident or occurrence.

Nature of Excess Aggregate Contracts

In "excess aggregate" all of the settlements, the judgments, the legal costs, the weekly payments for compensation, the medical bills, the surgical bills, the hospital nursing, the funeral expenses, and the reserves set up by some servicing company are aggregated. As soon as these aggregate claims exceed the aggregate deductible during one policy year, the excess is paid to the insured by the "excess aggregate" insurer on a monthly or quarterly basis as reported.

For automobile and comprehensive general liability, the actual loss record for the last three to five years is studied meticulously by the insured and insurer; trends and sales are noted; a safety margin is determined; and then an aggregate amount is purchased to serve as excess over the self-insured aggregate deductible determined. The underwriter for the excess aggregate will normally then require that excess liability for any one accident or occurrence be purchased since two or more lives may be involved in one incident, and there may be a very substantial single claim. If, for example, there is a specific excess liability policy for $1 million over $25,000 self-insured for each and every loss, the excess aggregate will then apply only to the first $25,000 for each incident.

In workmen's compensation the excess aggregate may be excess of a dollar amount. Normally, however, the plan is one whereby the ordinary premium is calculated for the risk by applying regular classification rates to the insured's payroll and then modifying the result by any experience credit or debit. About 10 to 15 percent of the premium is used for the purchase of an excess aggregate coverage over an aggregate retention by

the insured of 75 percent of the normal premium for loss and loss expenses.

An underwriter will require as a condition to an excess aggregate contract that a servicing company be appointed. There must be a supervision of all the legal obligations of the insured; accurate records kept; adequate inspection and safety work performed; monthly or quarterly reports made to the employer and the carrier; a tabulation made of payments and reserves; a procedure set up for making all statutory reports and presenting required legal notices; and an overall guidance established as to the work performed by the employees of the insured in the self-insurance program. During the last 40 years there have been a great number of servicing companies created with about a dozen very large ones in the field.

With regard to automobile and workmen's compensation liability, it is necessary that the insured qualify as a self-insurer under the laws of the various states. Bonds or deposits may be required. This cost as well as the cost of the servicing company have to be borne by the insured.

Building Excess Aggregate into Umbrella

An excess aggregate may be built into the umbrella. There is a danger very often in the purchase of inadequate limits for excess aggregate. Without the umbrella, the usual figure of $250,000 may be purchased, but any claims department supervisor can tell a large insured of instances where unusual frequency suddenly developed in a risk and produced a long series of bad injuries. The umbrella, therefore, not only can protect the insured against a big catastrophe—such as an explosion, a fire, or a poisoning—but also can provide a large limit for an aggregate of many losses.

There are serious problems for the insured in self-insurance arrangements. First, the geographic area of exposures may be large. Handling losses can be costly without the service of numerous branch offices of an insurance carrier. Each case must be carefully analyzed to make sure that the firm's expenses are going to be less than the normal insurance carrier's expense loading. Second, the reserves set up by the insured and the servicing agent and unpaid at the end of the year are not subject to any tax credit. There is a deferring of tax credit until payment is actually made. There is also a problem in that the normal excess aggregate contract will have a commutation clause whereby the underwriters may have an actuary fix a lump-sum settlement two years after the expiration of the excess aggregate to take care of workmen's compensation payments due over a long period of time. It then becomes the duty of the employer to invest the sum to provide the weekly amount needed for the workmen's compensation cases each week.

A cover which has a special kinship to excess aggregate is retrospective

penalty insurance. If an insured has purchased a retrospective plan (see Chapter 36), he is usually interested in the largest possible savings, but he may be apprehensive about the maximum possible loss to be borne under the retrospective plan. With a retrospective penalty arrangement, he can stop his retrospective premium charge at 110 percent of standard.

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Chapter 41

BOILER AND MACHINERY INSURANCE

BY LYMAN B. BRAINERD

When a boiler or other piece of power equipment explodes or suffers a serious failure, the owner may be faced with many kinds of losses. In addition to damage to the unit itself, his building and its contents may be destroyed; he may be held liable for damage to property of others; bodily injury liabilities may be involved; loss of income due to business shutdown is likely; and goods in process or storage may spoil from lack of heat or refrigeration. All of these exposures can be covered under a single Boiler and Machinery Policy which is, in a sense, a package policy—one of the earliest to be developed in America. This chapter deals with this policy and its commonly used endorsements.

Although one of the smallest casualty lines (annual premiums approximately $85 million), boiler and machinery insurance (sometimes referred to as power plant insurance) is notable for its strong emphasis on loss prevention, for unusual flexibility in selection of coverages, and for refinement of its rate structure.

The kinds of equipment and many of the hazards insured under boiler and machinery policies differ in a number of ways from those in other lines of insurance. These features and the origin of the line will be treated briefly before the insurance coverages and provisions are described.

ORIGIN AND BASIC CONCEPTS

Boiler and machinery insurance first appeared in the United States in 1867 and grew out of the necessity for finding a way to curb the alarming and increasing number of boiler explosions occurring at the time. The first company was organized by a group of engineers whose objective was prevention of boiler explosions—insurance was a corollary in this effort.

The new company was founded on the principle that a boiler, correctly designed and constructed, would be safe if operated properly. Control of the design and construction factors could be obtained through cooperation with boiler manufacturers. Control of operating conditions in plants

"Umbrella" "Kitchen Sink" "All Risk"

Special Risk Underwriting

by

L. F. Hawley

(speech before Chicago Chapter, ASIM, Seminar)

The printed announcement of this Seminar states that I am to speak to you on the subject of "Special Risks"— what exposures require "special risks" treatment, also "when" and "how" to negotiate for such insurance protection. This is rather a confusing assignment as, quite frankly, I am somewhat at a loss for an adequate definition of the term "Special Risks." I assume that the multiplicity of business operations represented here today must naturally present many hazards or exposures to be insured, which may be classified as "unusual" or "special." On the other hand, I have always felt that there is no hazard which cannot be insured if the underwriter of the insurance can receive adequate premium to compensate him for the risk assumed.

If you agree, then when there exists a bona fide insurable interest, it only remains to determine the degree of exposure, in order to determine a fair premium for the risk of capital undertaken. It is not always easy to resolve such questions, however, due to several factors.

Firstly, the unusual or special hazard existent in one particular business may not be insured frequently enough to provide any particular insurance market with sufficient spread of risk or sufficient loss experience to determine a reasonable or adequate premium.

Secondly, the risk to be insured may be of such a short duration as to be subject constantly to a total loss, with no recurrence in the future to enable the underwriter to gamble again if he has lost the first time. Those of you who have ever shot "craps" will certainly agree that you never came away from the table a winner unless you occasionally doubled your bets at the right time!

Thirdly, since no individual is clairvoyant enough to foresee the future precisely, there is bound to be a constant difference of opinion between the buyer and seller of insurance, both as to the seriousness of the exposure and as to the possibilities of recurring claims.

"Umbrella Liability"

The unforeseeable perils of the present and future are what create the need for an adequate insurance program, devised to protect not only every conceivable risk but also those which may be unknown at the moment to any of the individuals involved in a given enterprise. Such protection has been introduced in recent years, and for lack of a better name has been referred to in the industry as an "Umbrella Liability" policy. This is usually written on a single limit basis covering both Bodily Injury and Property Damage Liability in amounts ranging from one to five million dollars. Since it literally covers all risks, thereby insuring the unknown hazards, it is written as excess insurance applying both in excess of an existing insurance program and when no insurance is carried on a particular exposure, then in excess of a substantial self-insured deductible. For those exposures which are not specifically insured, the assured is required to be a self-insurer for a minimum amount of $25,000, which deductible of course may be increased upwards as required.

One of the interesting features of this relatively new form is the fact that it is written on what is known as an "occurrence" basis rather than a "per accident" basis, without any limiting definition of the word "occurrence." In addition to the customary "Bodily Injury" coverage contained in a standard Liability policy, this policy form has been extended to include "Personal Injuries" such as —"mental anguish", "false arrest", "discrimination", "libel", "slander", etc., but without limitation to these personal injuries specificially enumerated. Advertiser's Liability would also be included under this broad form coverage, which may present a contingent liability exposure to many of you. With respect to the Property Damage coverage, there is no exclusion as respects premises which may be leased, rented or used by the assured, nor with respect to property in the assured's care, custody or control. In the past there have been very definite exclusions in the customary Property Damage policy form of the average insurance company.

If the assured carries regular Workmen's Compensation Insurance, the "Umbrella Liability" policy provides Excess Employer's Liability insurance over the Employer's Liability limit contained in the Workmen's Compensation policy, or in the event that he is a self-insurer in this respect, then the "Umbrella" policy provides an additional layer of Excess Workmen's Compensation over any existing Excess Compensation which might be carried by the self-in-

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"Umbrella"

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sured. There has also been a broadening of the definition of the "Insured" to include an *employee* of the named insured while acting in such capacity. Thus, the "Umbrella" form of Excess Liability coverage has materially broadened the insurance protection afforded heretofore by various casualty policies.

"All Risks" Insurance

The desire of many of you insurance buyers, for comprehensive protection with respect to Property Insurance has also been fulfilled by the Special Risk Underwriters. Here, again, this excess coverage has been known by various names, such as "Umbrella"; "All Risk"; "Kitchen Sink", or what have you. Actually, it is nothing more or less than another attempt by progressive insurance underwriters to provide literally "*All Risks*" Insurance for both real and personal property to apply in excess of the more commonly known standard policies of insurance. If you have purchased the standard forms of coverage which have been developed in recent years, it is sometimes difficult for one to imagine what exposures remain uninsured today when we think of Property-Insurance. As I mentioned previously, there is often a great difference of opinion as to what constitutes a serious insurable exposure. To cite a few, I might mention Water Damage, Earthquake, Consequential Loss, such as refrigeration breakdown, collapse of building, or the wrongful conversion of property owned or used by the assured or their agents. Some of you may not have carried this protection in the past because you felt the premium for such coverage was too high. The mere fact that the premium for such hazards may seem high, would seem to prove my earlier point that the underwriter oftentimes considers the exposures much greater than does the buyer, or else there is not enough of that particular type of insurance written to enable the underwriter to receive an adequate spread of risk. We are often asked to afford Flood Insurance, for example. However, it is rather common knowledge among insurance underwriters that the person who is primarily interested in purchasing Flood Insurance is the one who has locations which are directly exposed to the rising of navigable waters. However, when one stops to consider Water Damage we all know that it is insured on a very restricted basis by most companies. However, it is the Water Damage which occurs from causes which are usually excluded, that is the type of protection actually required. In other words, the backing up of sewers, seepage through building walls because of inadequate sewer system, or broken water mains, have undoubtedly caused more damage to property than the more simple exposure of the neglectful employee leaving a faucet turned on in the washroom after the premises are closed.

Loss of Use

In addition to the constant need of adequate Property Insurance, there is always an important insurable risk attached to the loss of use of such property. During recent years we have seen many catastrophic fires which have not only destroyed the insured's property but have totally crippled a business because of its inability to secure adequate raw materials to continue its manufacturing processes. While Use and Occupancy Insurance is readily obtainable from the more common causes of loss, such as Fire and Extended Coverage, many times it may be desirable to include other perils, depending on the type of property insured. Do not overlook the potential loss of income which might result from damage to movable property, such as construction or coal mining equipment, dredges, etc. Such property may require the inclusion of marine perils in a Use and Occupancy policy. While on the subject of Use and Occupancy coverage, I would also like to suggest for your consideration the advisability of purchasing such protection on an agreed value basis. This provides a sum of indemnity per diem agreed upon prior to the

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occurrence of a loss and thereby eliminates what might occasionally develop into a disagreeable or protracted claim settlement caused by a difference of opinion between buyer and Insurer as to the extent of loss of income.

Element of Depreciation

Another suggestion pertaining to the insurance of both real property and machinery or equipment is the element of depreciation. We still see a great many insurance policies written today which only call for the payment of "actual cash value" after deduction of "depreciation" whereas the cost of replacement may be far in excess of the insured value. In these inflationary times serious consideration should be given by the insurance buyer to such costs of replacement when insuring antiquated buildings, machinery, furniture and fixtures.

Casualty Field

Returning to the Casualty field again, I would like to point out also the fact that some businesses are particularly subject to liability which may result from the occurrence of an error or omission on the part of either management or employee. This hazard is particularly conspicuous in such personal service businesses as Architects, Auditors, Construction Engineers, Real Estate Management, Lawyers, Advertising Agencies. Some of you may feel that the purchase of Products Liability is sufficient but it is quite possible that an error or omission may cause a liability claim without it necessarily being attributable to the manufactured product.

I assume that many of you are not only interested in the insurance exposures of your business but also have certain responsibilities with respect to the financial operations. In this respect it might be of interest to you to know that corporations issuing new securities may now insure the liability imposed upon them by the Federal Securities Act of 1933 and the Federal Securities Exchange Act of 1934. This can also be of importance when there is a secondary sale or distribution of securities which may be the result of a liquidation. However, because of the complications attendant in such transactions I would suggest that you direct any inquiries on this point to your attorneys rather than to me!

Accident and Sickness

As you all know, another very important aspect of insurance is the field of Accident and Sickness. While such protection is written by both Life and Casualty companies, there are certain unusual exposures in the field which still must be solved by the Special Risk Underwriter. Despite the vast number of insurance companies writing all forms of accident and sickness disability income, hospitalization, death and dismemberment, etc., they still find it very difficult to undertake the more hazardous risk requiring large sums for death benefits, particularly if it is for a short term risk. For example, the insuring of newspaper reporters, or technicians and engineers, who may be doing experimental work throughout the world, oftentimes has posed a problem, particularly when the buyer wishes to protect his employees against such an unusual hazard as "War Risk." There have been many special policies written by relatively few underwriters primarily because the mine-run of Life companies are reluctant to undertake such risks due to a lack of volume or spread.

Special Risk Underwriters

Obviously, when the so-called Special Risk Underwriter ventures into the insuring of the unusual he often thinks in terms of a deductible in order to have the assurance that the insurance buyer will also assume some of the risk involved. It is not often possible for an insurance underwriter to secure enough premium to offset the lack of cooperation which might exist where the insured does not carry any of the risk themselves. With respect to deductible forms of insurance, the thinking of Special Risk Underwriters has also broadened in recent years to include the use of an *aggregate* deductible. For many years it was only possible to purchase insurance that was subject to a deductible clause on a per accident basis. However, in recent years when an insurance buyer is able to provide an accurate experience for a minimum of past five years, then it is often possible for an insurance underwriter to devise a premium which fairly evaluates protection in excess of aggregate losses in any given year.

While some of the coverages that I have mentioned are not always readily obtainable, oftentimes this is due to the lack of proper underwriting information. Many corporate buyers of insurance are too reluctant to divulge such vital information as values, past loss experience, and complete details concerning their existing insurance program. Some times this is caused by the fact that more than one insurance broker is employed and therefore there is a reluctance on the part of the insurance buyer to inform the broker who has been requested to provide broader forms of coverage, with the necessary information concerning existing insurance policies which may have been purchased through other brokers. I would not presume to advise you gentlemen concerning your choice of insurance brokers, but suffice it to say that sometimes "too many cooks may unwittingly spoil the broth."

If you are seeking insurance protection against those disks which have in the past seemed uninsurable, then you must start out by supplying the fullest information possible. No underwriter or insurance broker can intelligently devise an insurance policy form without full knowledge of all aspects of the risks to be insured. Withholding information from either your broker or your prospective insurance Underwriter, either intentionally or otherwise, can only work to your detriment in the final analysis. If pertinent underwriting information has been withheld at the time the risk is placed, then it is bound to influence the insurer's generosity when a debatable claim arises. If past loss information has been withheld, then it is bound to ultimately affect the stability of your insurance market since there is bound to be an adverse loss ratio to the insurer due to a basic inade-

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quacy of the premium at the time the risk was assumed.

There has been a marked broadening of policy forms by the American insurance companies in recent years. As the companies have expanded and prospered they have naturally been willing to assume greater risks and venture to a greater degree into the unknown. On the other hand, many American insurance underwriters lack both imagination and courage. Some of their caution rightfully arises from the fact that they have, upon occasion, been unable to secure adequate premiums for the unknown risk to be assumed. On the other hand, those who have desired to be more courageous and progressive, have, upon occasion, been hindered by various State regulatory bodies which continue to govern our destinies to a great extent. There is no doubt that many of the regulations imposed by the State Insurance Department upon American companies are essential for safeguarding the interest of the individual insurance buyer. However, when large corporations enter the insurance market they have competent insurance men negotiating their coverages and therefore would not require as much supervision from political bodies as does the individual buyer. Therefore, in many instances certain unadmitted insurers have been able to provide broader forms of protection for the large corporate buyer than can the admitted insurer. Such coverages, of course, must be placed on what is known as a "Surplus Line" basis because of the fact that the insurance Underwriter involved is not licensed in the particular State.

Lloyd's-London

Because of the unusual make-up of Lloyd's, London, it has been practically impossible for them to become entered in the various States. However, in recent years they have entered the States of Illinois and Kentucky and do conduct their business in those States on the same basis as any other admitted company. Because of the fact that Lloyd's is an association of individuals it has, by its very nature, progressed in an atmosphere which encourages initiative and freedom of action. Each Underwriting Syndicate at Lloyd's is operated by an underwriting agent who is free to act on his own initiative and is permitted to commit those members of his Syndicate to the terms of any insurance coverage which he elects to effect. Because of this freedom of action, Lloyd's Underwriters have, since their inception, written all forms of insurance excepting Life and Financial Guarantee Policies. It is not unusual for the same Underwriting Syndicate to assume the risks of Fire, Casualty, Marine, Aviation, Accident and Sickness or Fidelity.

It is only in recent years that American insurance companies have broadened their charters to enable them to write all these various coverages in one company. Some companies still have not progressed to that extent, but have accomplished this ultimate goal through either the purchase of other compaines or through effecting mergers of companies who have underwritten these different forms of insurance. There is no doubt in my mind that within the foreseeable future most large Property Insurance companies will also write the Casualty forms of coverage in the same policy and vice versa. However, before this can become common practice it will be necessary for these companies to train underwriters in *all* branches of insurance rather than only the specialized fields in which they have operated in the past.

Until such time as American companies have such experienced underwriters in their employ, it will undoubtedly be necessary for large corporate buyers to continue to use Lloyd's or other experienced non-admitted insurance markets, who, by their very nature, enjoy a greater freedom of action. In the final analysis I don't believe that anyone can specifically define a "special risk" as a particular form of insurance coverage, since that which may appear to be "unusual" to one underwriter, may well be considered as "usual" or "commonplace" to those underwriters who have for so many years been progressive in their approach to the insurance requirements of our expanding economy.

(Mr. L. F. Hawley is president of Newhouse and Hawley, Inc., Chicago, Illinois. He has been in the insurance business for twenty-five years; is a member of the Union League Club, Mid-Day Club, Executives Club, and Westmoreland Country Club. A former chairman of the Association of Lloyd's Brokers, he is presently a director of that Association.)

INSURANCE LAW

AND

PRACTICE

WITH

FORMS

Revised Volume 8A

Sections 4891-4930

By

JOHN ALAN APPLEMAN

and

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of the Illinois Bar

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subject to criticism, because the excess coverage clause would apply to subsequent, as well as prior, insurance. The time of issuance, therefore, should not really be determinative of the question as to primary and excess coverage.

Insolvency of one of two primary insurers gave rise to liability under an excess policy after the primary coverage was exhausted.[42]

Losses were prorated between the insurers of a lessor and lessee, both policies containing excess insurance provisions.[43] But the amount of premium received by a lessor will not necessarily determine its category of risk.[44]

§ 4909.85 Excess Coverages—Umbrella or Catastrophe Coverages

One very important type of coverage in these days of potentially high verdicts is that provided by so-called umbrella or catastrophe policies. Briefly, these are policies of insurance sold at comparatively modest cost to pick up where primary coverages end, in order to provide an extended protection up to a million, five million, ten million, or more. It gives a financial security, as well as peace of mind, to the individual purchasing such coverage who is hopeful that he will never be involved in any substantial claim or lawsuit, but, if he is, is desirous of not losing the security it may have taken a lifetime to acquire.

It should be noted that these policies often provide a primary coverage in areas which might not be included in the basic coverage, since it is the intent of the company to afford a comprehensive

But see:

U.S.—Oregon Auto. Ins. Co. v. U. S. Fidelity & Guar. Co., C.A.Or.1952, 195 F.2d 958 (automobile liability policies containing similar clauses as to other insurance); Travelers Ins. Co. v. Peerless Ins. Co., C.A.Or.1961, 287 F.2d 742.

42. Cal.—McConnell v. Underwriters at Lloyds of London, 1961, 16 Cal. Rptr. 362, 56 Cal.2d 637, 365 P.2d 418.

Determination at date of occurrence

Excess insurer was not liable for insured's loss which was less than primary insurance coverage where primary insurer became insolvent only after occurrence of accident out of which liability arose. Golden Isles Hosp., Inc. v. Continental Cas. Co., Fla.App.1976, 327 So.2d 789.

43. Cal.—Athey v. Netherlands Ins. Co., 1962, 19 Cal.Rptr. 89, 200 Cal. App.2d 10.

44. Insufficient premium

That lessor's insurer may not have received all premium it should have collected for its exposure on its automobile liability policy was not decisive of insuring intent for purposes of determining whether it or another insurer was primarily liable for loss resulting from accident. Sathre v. Brewer, 1971, 184 N.W.2d 668, 289 Minn. 424.

protection in order that such peace of mind may truly be enjoyed. In those areas, such coverage will, in fact, be primary.[1] This may, and usually does, include such coverages as protection against liability for libel, slander, false arrest, false imprisonment, invasion of privacy, and malicious prosecution. We are not concerned, in the present discussion, with areas where its coverage may be primary—only with those areas where there is other insurance upon the risk with the question presented as to where the loss shall fall, and with the question of sharing, if any, of the consequences.

The courts are not ignorant of the desirable socio-economic consequences attendant upon the providing of umbrella or catastrophe coverages. They recognize that this involves no attempt upon the part of a primary insurer to limit a portion of its risk by describing it as "excess", nor the employment of devices to escape responsibility. Therefore, umbrella coverages, almost without dispute, are regarded as true excess over and above any type of primary

1. Plaintiff-assured, the general contractor on a building, reasonably expected that policy issued to it by insurer would provide coverage against negligence claims relating to its construction of the building where the underlying policies failed to do so, considering fact that the underlying policies were in substantial amounts and that the policy which the assured sought and obtained from insurer was intended to operate and was expressly called an "umbrella policy" by the insurer; therefore, under settled principles, the ambiguous policy had to be resolved against the insurer. Bryan Constr. Co. v. Employers' Surplus Lines Ins. Co., 1972, 290 A.2d 138, 60 N.J. 375.

Likewise catastrophe policy covering claim not otherwise covered

Under county's contractors' catastrophe liability policy, which referred to and incorporated another policy which designated road-paving machine as an automobile, insurer provided to county for excess coverage for claims by railroad and injured crewmen and for machine owner's cross claim for indemnification and in addition provided coverage for owner's claim for damage to machine, which was not within coverage of underlying policy referred to. Wyoming County v. Erie Lackawanna Ry. Co., D.C.N.Y.1973, 360 F.Supp. 1212, judgment affirmed C.A., 518 F.2d 23 (policy specifically provided coverage for property damage not within terms of underlying coverage but within terms of this insurance subject to retained limit).

Jeweler's policy

In jeweler's policy which, in effect, provided "property insurance" coverage with respect to property of customers and other dealers, as to which the jeweler might be liable for loss or damage under bailor-bailee principles, and also provided liability insurance, exception, in "other insurance" clause, "excepting as to the legal liability of the insured" was intended to preserve primary coverage for jeweler for all covered property loss or damage for amount at least equal to legal liability, and exception did not refer only to property insured under one property insurance paragraph which alone referred to "legal liability" of insured. Home Ins. Co. v. Balfour-Guthrie Ins. Co., 1970, 476 P.2d 533, 13 Ariz.App. 327.

coverage,[2] excess provisions arising in regular policies in any manner,[3] or escape clauses.[4]

2. Mo.—Swift & Co. v. Zurich Ins. Co., 1974, 511 S.W.2d 826.

Not made primary

Excess insurance policies in which insurer agreed to cover accidents arising out of ownership, maintenance or use of any automobile as defined by the primary policy did not incorporate by reference primary policy's other insurance clause so that excess insurance policies remained excess policies with respect to primary policy and with respect to another policy which also covered the vehicle in question. Swift & Co. v. Zurich Ins. Co., Mo. 1974, 511 S.W.2d 826.

Personal excess policy

Caption describing automobile owner's policy as a "Personal Excess Liability Insurance Policy" was not controlling but where "other insurance" clause of such policy made it clear that owner's insurer was not to contribute with any other insurer except one providing identical type of excess insurance which is defined as insurance purchased to apply in excess of the sum of retained limit and the limit of liability hereunder, coverage afforded by such policy was excess over that afforded by driver's policies, and owner's excess liability insurer was not subject to pro rata liability with driver's insurer when limits of owner's primary liability insurance were exhausted without extinguishing obligation of driver, who was additional insured under owner's policies. Aetna Ins. Co. v. State Auto. Mut. Ins. Co., D.C.Ky. 1973, 368 F.Supp. 1278.

Where underlying insurance required

Where catastrophe liability policy insurer agreed to pay up to policy limits for any loss suffered by insured in excess of the total of the applicable limits listed in schedule and any other underlying insurance collectible by insured or (if greater) the retained limit which was $250.00 and endorsement listing schedule of underlying policies specifying $100,000/$300,000 limits for underlying scheduled automobile insurance policies warranted that such insurance would be kept in force and that if it were not policy coverage applied in same manner as if it had been but unlisted automobile, which was registered in insured's name, was being driven at time of accident by insured's son was covered by an unlisted $10,000/$20,000 unlisted policy, (although insured had the specified greater limits on his own cars) the catastrophe liability policy insurer had no liability with respect to such accident until insured had incurred a net loss in excess of underlying scheduled policies. 28 U.S.C.A. § 2201; Fed. Rules Civ.Proc. rule 56, 28 U.S.C.A. Wommack v. U. S. Fire Ins. Co., D.C. Ark.1971, 323 F.Supp. 981.

Road paving machine as automobile

Under county's contractors' catastrophe liability policy, which referred to another policy as underlying policy thus incorporating the latter's designation of the road-paving machine as an automobile, insurer provided excess coverage to county foreman, who was using machine, and to county for excess coverage for claims by railroad and injured crewmen and for machine owner's cross claim for indemnification and in addition provided coverage for owner's claim for damage to machine, which was not within coverage of underlying policy referred to. Wyoming County v. Erie Lackawanna Ry. Co., D.C.N.Y.1973, 360 F.Supp. 1212, judgment affirmed C.A., 518 F.2d 23 (catastrophe policy had allowed addition as persons insured any additional insured included in the underlying insurance but only to the extent that insurance is provided for such additional insureds thereunder and accord-

3. See note 3 on page 455.

4. See note 4 on page 456.

ingly on endorsement providing typical automobile omnibus coverage had been added).

Excess insurance

Where excess insurer agreed to indemnify carrier engaged in transporting automobiles in accordance with applicable insuring agreements of primary insurance as fully and to all intents and purposes as though primary insurance had been issued for limits set forth in the excess policy, the excess policy was an endorsement to, and formed part of, the underlying policy issued by another insurer and the excess policy extended coverage to same persons as the underlying policy. Federal Ins. Co. v. Allstate Ins. Co., 1975, 341 A.2d 399, 275 Md. 460.

Errors and omissions policy primary over comprehensive policy

U.S.—Bettenburg v. Employers Liab. Assur. Corp., Ltd., D.C.Minn. 1972, 350 F.Supp. 873 (see n. 53).

Bumbershoot, in marine

U.S.—Anne Quinn Corp. v. American Mfrs. Mut. Ins. Co., D.C.N.Y.1973, 369 F.Supp. 1312, affirmed 505 F.2d 727 (after deductibles satisfied).

3. "Finally, relying on Motor Vehicle Casualty Company v. Atlantic National Insurance Company, 374 F.2d 601 (5th Cir. 1967), appellant maintains that the excess coverage policies are mutually repugnant, so that any recovery beyond the primary policy limits should be prorated between the two carriers. The pertinent provision of Aetna's policy states:

" '[t]he insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.'

"The relevant portion of the excess (umbrella) policy written by American States provided:

" 'If other collectible insurance with any other insurer is available to the insured covering a loss also covered hereunder (except insurance purchase to apply in excess of the sum of the retained limit and the limit of liability hereunder), the insurance hereunder shall be in excess of, *and shall not contribute with*, such other insurance. (emphasis supplied).'

"The trial court found that these policy provisions were not mutually repugnant. The American States policy provides not only that its coverage is in excess of other available insurance coverage, but also that the coverage 'shall not contribute with such other insurance.' So long as the requirements of law have been met, parties to contracts are free to shift the burden of loss. Insurance Company of North America v. Avis Rent-A-Car System, Inc., 348 So.2d 1149 (Fla. 1977). Florida's financial responsibility laws were satisfied in this case. After comparing the language of the two policies, the trial court correctly determined that the excess coverage should not be prorated." Aetna Cas. & Sur. Co. v. Beane, Fla.App.1980, 385 So.2d 1087 at 1089, 1090.

Excess insurance provisions of hired automobile coverage clauses granted "other collectible insurance" within meaning of a contingent excess condition clause in umbrella policy, so that once primary insurance limits were exhausted, excess insurers of lessee were required to absorb remaining loss on a pro rata basis to limits of their policies before umbrella insurer of lessor became liable. Allstate Ins. Co. v. Employers Liab. Assur. Corp., C.A.Fla.1971, 445 F.2d 1278.

Where comprehensive automobile and garage liability policy provided to the named insured automobile rental agency primary coverage except where stated to be excess and there was no applicable excess provision with respect to coverage of rental agency's automobile while being driven by gratuitous bailee, and the umbrella liability policy stated it was excess coverage in event of other collectible insurance umbrella liability insurer was not liable for payment of judgment recovered against driver until exhaustion of proceeds of the compre-

hensive automobile and garage liability policy. Carriers Ins. Co. v. American Home Assur. Co., C.A.Kan.1975, 512 F.2d 360.

And see

La.—Blanchard v. Rodrigue, App. 1976, 340 So.2d 1001, writ denied 341 So.2d 1129 and 341 So.2d 1130.

Contra

U.S.—Insurance Co. of North America v. Continental Cas. Co., C.A.Pa. 1978, 575 F.2d 1070.

4. "Pending trial of the Wetzstein action, a settlement of $72,500 was made by that insurer of Mr. Wetzstein's claim and a dismissal with prejudice of his claim for damages was made. During trial of Mrs. Wetzstein's case, a stipulated judgment of $300,000 was entered against Otter. Of that amount, Pacific Indemnity paid $100,000 (thus discharging the limits of its policy liability). It has not appealed. The sum of $200,000 of Mrs. Wetzstein's judgment remains unpaid and payment will be determined by this appeal. That brings us to the issues relevant to this litigation.

The INA Policy

"INA issued a policy to Jefferson Motors, Inc., termed 'Excess Blanket Catastrophe Liability Policy *No. XBC 2 42 05.*' The policy period was from April 30, 1966, to April 30, 1969. The limit of its liability is clearly spelled out. In readable language and in bold faced type it informs its insured: 'It is agreed by the insured that the following *underlying* insurance [by another insurer] is in force as collectible insurance at inception of this policy for the limits of liability stated hereafter.'

"' . . . . . .'

"'(c) Automobile Liability	Bodily Injury Liability $100,000.00 Each Person $300,000.00 Each Accident Property Damage Liability $50,000.00 Each Accident'

"' . . . . . .'

(Our italics.)

"In referring to such underlying policy, the parties were not referring to the policy of Pacific Indemnity (Pacific insured *Otter* individually). It will be the burden of this opinion to demonstrate they had in mind the policy of General. Jefferson Motors bought the INA policy (through its insurance agent Krueger & Co.—the same agent through whom it bought the General policy). Jefferson Motors obviously wanted its business protected by the underlying insurance and in addition a policy of excess insurance affording much greater coverage.

"The INA policy so states. It tells its insured that it is insurance *in excess of all other insurance.* It says under the caption 'Other Insurance: If other collectible insurance with any other insurer is available to the insured covering a loss also covered hereunder (except insurance purchased to apply in excess of the sum of the retained limit and the limit of liability hereunder), the insurance hereunder shall be in excess of, and not contribute with, such other insurance. . . .' The policy limit of the INA insurance is $1,000,000. The trial court expressly found the INA policy to be excess insurance. In the language of the insurance industry a policy of the type issued by INA is called an 'umbrella' policy. * * *

"As we have already explained, it is quite apparent that when Jefferson Motors bought the General policy, it bought and paid its premium for underlying coverage of garage liability of $100,000–$300,000, and when it bought its INA policy, it bought and paid for an "umbrella" policy of $1,000,000 of insurance which was intended to be, was stated to be, and must be interpreted to be, excess over all other available insurance.

"We hold that General is liable to the extent of its policy limits which, under the facts of this case, is $100,000. INA is liable for the excess: $100,000, both such sums to bear in-

Where an insured's failure to secure the proper fire insurance for its clients began during the September 1964–September 1966 term of first errors and omissions policy and was a continuous omission existing immediately prior to an October 1966 fire which destroyed the clients' property and thus was within the October 1966–October 1967 term of second errors and omissions policy, the "other insurance" clause in the second policy was not operative and the issuer of the second policy, rather than the issuer of the first policy, which was only an excess insurance over the other valid insurance, was primarily liable for the cost of defending the insured against the actions arising out of its negligence.[5]

§ 4910. Escape Clauses

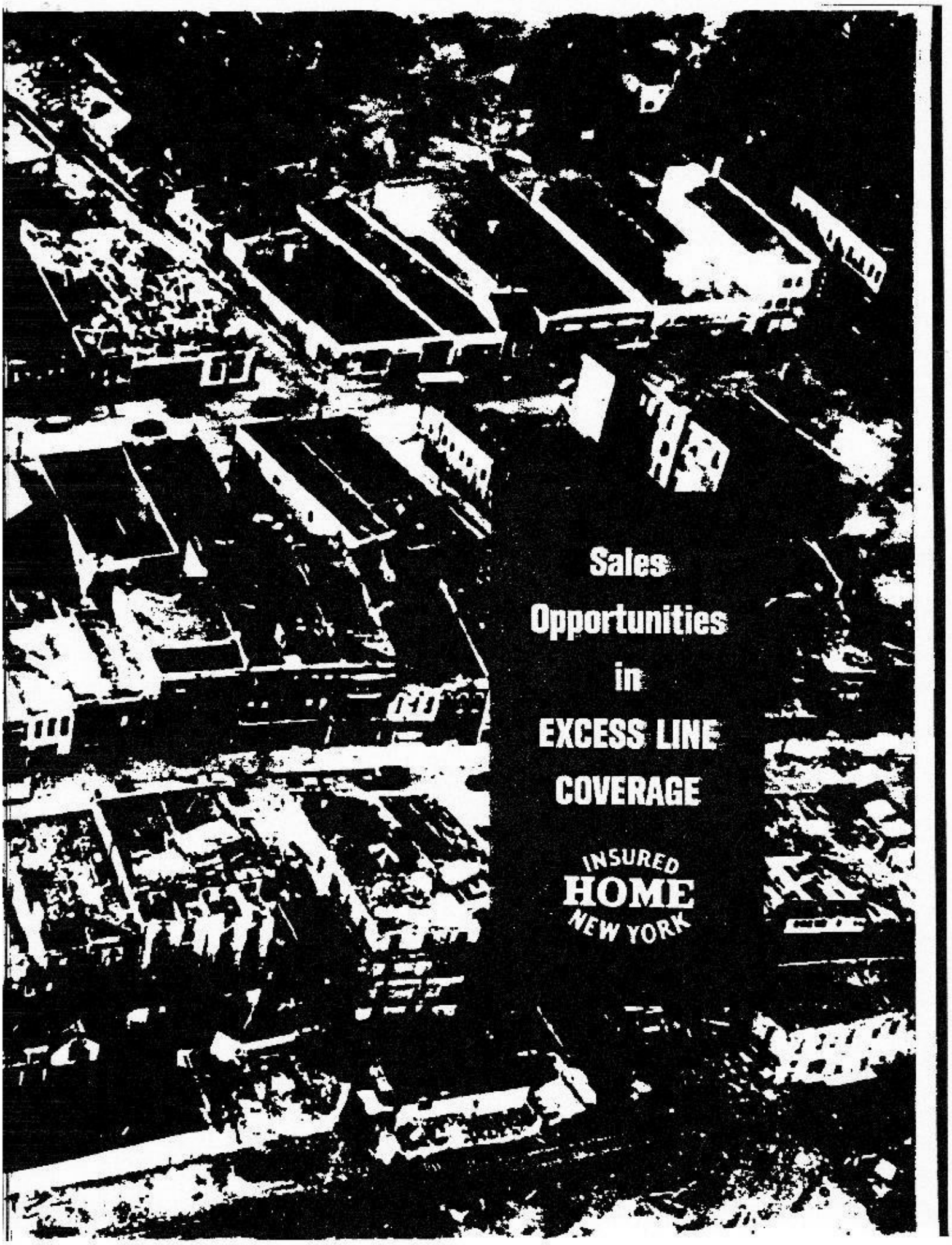
Validity and general scope

As pointed out in the first section under this chapter, there are many wordings of escape clauses. In some respects, one of the most common is the combined escape-excess provision in which the company intends not to cover a certain risk *but*, if held in that situation, desires to make its coverage excess over any valid and collectible insurance. The most modern of super escape-limited risk coverage actually falls in this category, attempting to freeze any potential liability to the amount fixed by the financial responsibility laws. The wordings often do not matter as much as the attitude of the courts.

A basic escape clause provides that there shall be no coverage where there is other valid and collectible insurance. There are many modifications of the language, since this is a non-standard provision, and they have crept into many aspects of liability insurance, not being limited to automobile coverages, although their construction has arisen most frequently in that context. They are not the same as exceptions to coverage, or exclusions, since in those situations the risk is not undertaken irrespective of the existence of other insurance. Escape clauses may be found in private contracts where one acquires a new vehicle which is specifically covered by a new policy, although some provisos seek to limit the efficacy of coverage where any substitute automobile is used. Rental agencies occasionally use

terest as to Mrs. Wetzstein as provided in the judgment of the trial court." Otter v. General Ins. Co. of America, 1973, 109 Cal.Rptr. 831 at 834, 839, 34 Cal.App.3d 940.

5. U.S.—P. L. Kanter Agency, Inc. v. Continental Cas. Co., C.A.Mich. 1976, 541 F.2d 519.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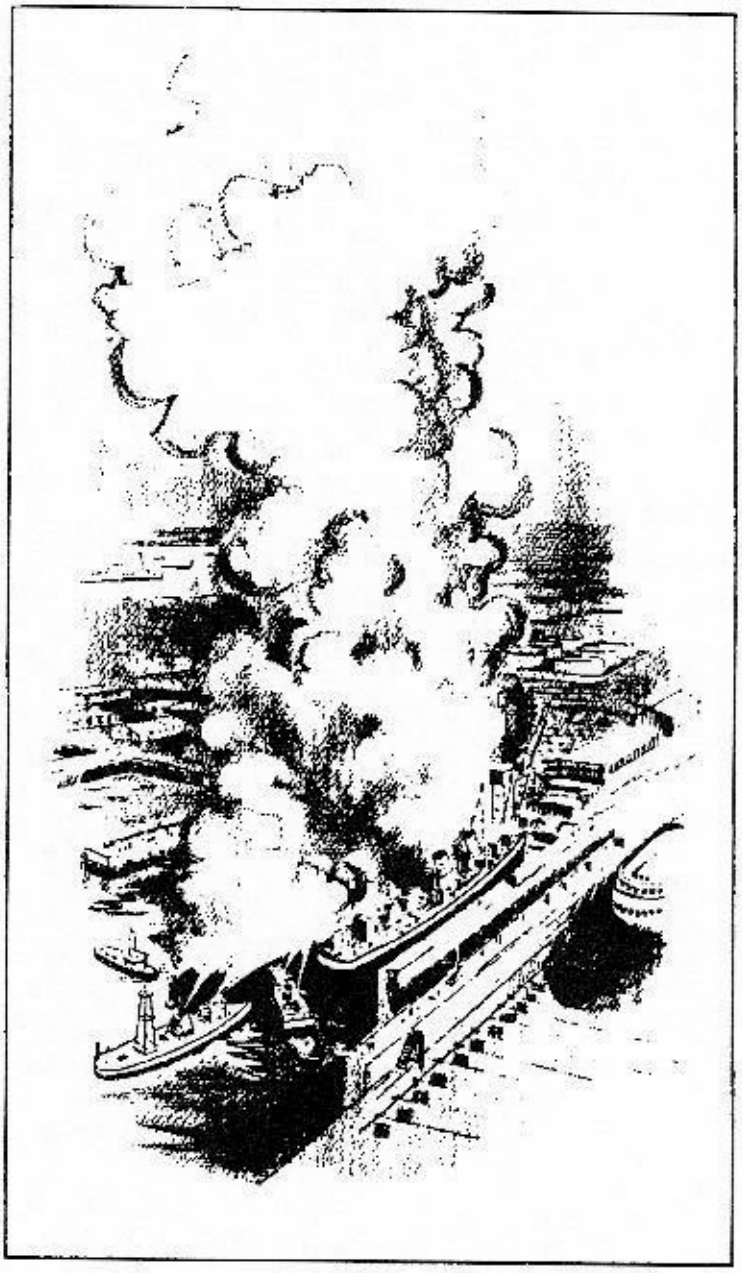
The HOME has become one of the leading markets for EXCESS insurance in this country in a few short years. This booklet has been prepared to assist you in winning a greater share of this business, and to help you in protecting your present accounts with widely-accepted, up-to-date coverage that offers complete protection for your insured.

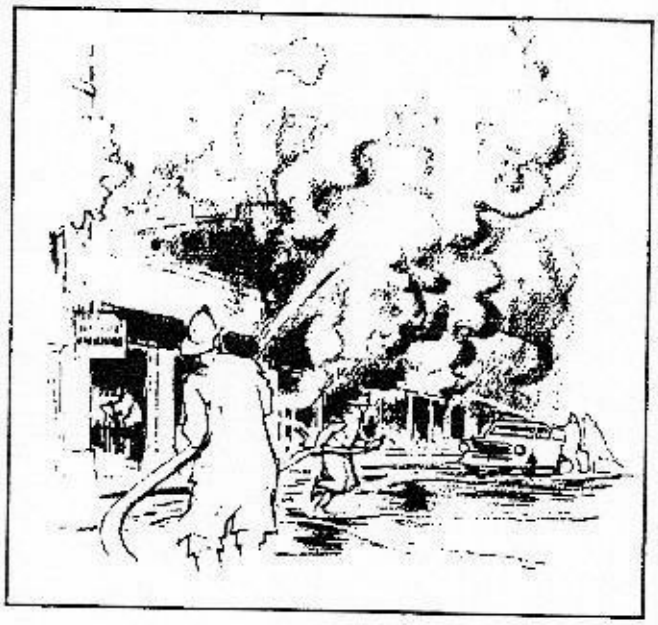
The EXCESS LINES Department opens vast new opportunities for you. Opportunities to serve your clients more completely and effectively...opportunities to add new clients to your account list...opportunities to increase your sales and increase your volume—substantially.

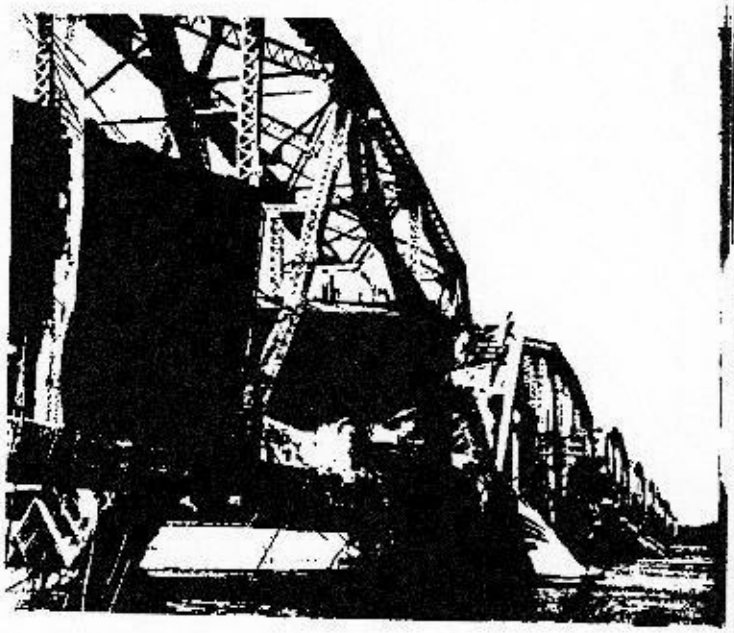


The Reason for the Need for EXCESS Coverage

Excess coverage is simply protection against unforeseen events of serious magnitude which could wreak havoc on an individual or organization who, under any normal situation, would be considered prudently covered.

It may be wise, when establishing a primary insurance program for a client, to follow the old and tried theory of *spread of risk*. In those cases where a highly serious, or heavy exposure exists, it is well to limit the insured's liability to a reasonable primary program and to preserve the Excess limits for the genuine catastrophe. By following this approach, you present your client with an excellent opportunity to minimize his premium costs by spreading the liability among several underwriters—primary and Excess.





EXCESS INSURANCE COVERAGE

A Market Scaled to the Times

Good businessmen know that occasionally disaster is of such proportions that the business cannot survive it...that the owners may even lose their *personal assets*, if sued. They know, too, that these excess risks can be countered by special coverage which offers protection greater than that provided by existing, "normal" policies. Now, more than ever before, they are receptive to the story of the excess coverage protection offered by The HOME.

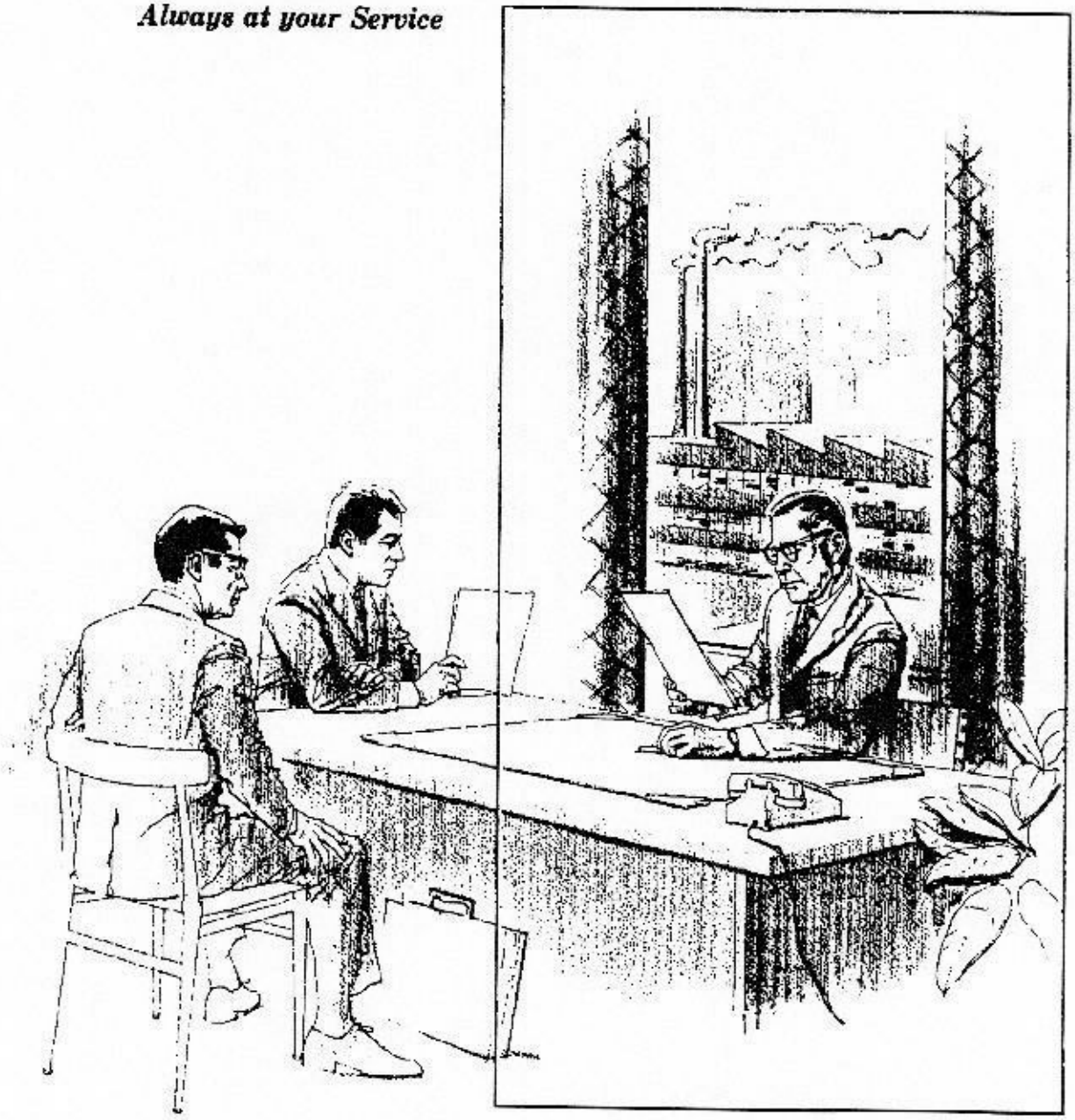
The HOME's EXCESS Lines Department has proved itself a most competitive, knowledgeable and productive unit. It is willing to entertain EXCESS risks and accept high limits of liability amply satisfactory to cover the major portion of what might otherwise be a disastrous loss. Furthermore, it offers this protection at very *attractive rates*.

Since it was established, it has met the insurance needs of many different kinds of businesses in different communities all over the country. There are many firms whose operations necessarily involve extraordinary and unusually serious exposure to risk. These companies do not obtain truly adequate coverage through their primary insurance alone.

A Market of "Special Cases"

It is obvious that each EXCESS Line risk must be considered on its own merits. Every situation is a "special case," and not all risks are acceptable for EXCESS coverage by your company.

Always at your Service



It is important that you work with the company as early as possible when dealing with a prospective client. Our people can very competently help you help your clients. But they must have facts to work with: specific information regarding the underlying insurance...the degrees of risk involved...other specific factors relating to the specific situation. For in providing this coverage, we improvise—"manuscript" a policy to the specific requirements of the client. If you consult with us in advance, we can expedite our replies, together with our recommendations.

You will find that your prospects are most willing to cooperate. For without knowing the technicalities of this field, businessmen generally understand that their situation is "different" or "special." They are quite prepared to give you the information we need. They realize that as they help you, they help themselves.

SOME PROSPECTS FOR EXCESS COVERAGE

- **Automobile Dealers**
- **Builders & Contractors**
- **Bridge & Tunnel Authorities**
- **Manufacturers**
- **Marinas, Towing Companies, Yacht Basins**
- **Professional People**
- **Public Places**
  - **Apartment Houses**
  - **Art Galleries**
  - **Banks**
  - **Department Stores**
  - **Real Estate Syndicates**
  - **Restaurants**
  - **Stadiums**
  - **Theaters**
- **Public Utility Companies**
- **Special Events**
  - **Outings**
  - **Parades**
  - **Picnics**
  - **Sports**
- **Truckers**

EXCESS CASUALTY LIABILITY

"Umbrella" Coverage

Prospects for this type of EXCESS Coverage insurance include Manufacturers...Truckers ...Public Places...Real Estate Syndicates... Builders & Contractors, etc.

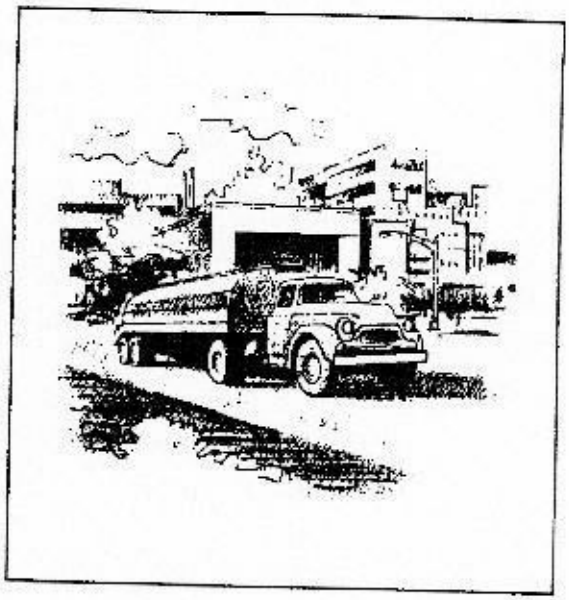
In addition to the coverages usually included in the primary automobile and general liability policies, manuscript or umbrella policy insurance, etc., covers the following:

Bodily Injury, Property Damage
Blanket oral and written contracts
Care, custody control liability
Employer's Liability
Advertising Liability
Employee coverage as named insured
Water damage legal
Broad named insured
World wide coverage
Liquor law liability
Watercraft liability
Aircraft liability

The coverage afforded under this type of contract is perhaps the broadest form of comprehensive liability on the market. It affords the insured the nearest thing to complete "sleep-easy" insurance—assuring him of broad, all-inclusive insurance with few, if any, exceptions.

Extensive... Popular

Among the outstanding features in this contract is the fact that in addition to providing the same coverage as that obtained from primary policies—but on an Excess basis—it extends beyond the primary coverage and affords protection where the primary would not respond. This extension of coverage in the Excess "Umbrella" comes in over a self-retention or out-of-pocket participation on the part of the insured. In other words, this "Umbrella' coverage acts as an over-all policy: It grants



Excess limits and coverage both of insurance in force on an underlying basis, and also of self-insurance where coverage is not afforded.

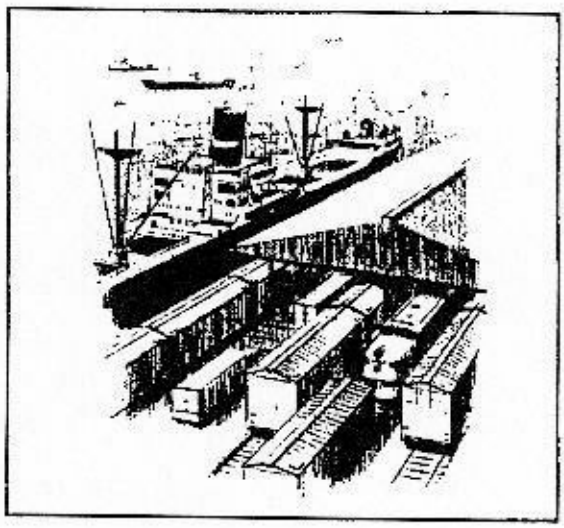
As you can see, the "Umbrella" policy offers a dual type of coverage...offers dual protection. It provides broad consequential-damage protection. It can afford protection for owned aircraft and watercraft and does provide coverage for non-owned aircraft and watercraft liability...advertiser's liability and employer's liability. It protects manufacturers, wholesalers and retailers. It protects them in continental U.S.A.—and world-wide. This policy takes a long step in the direction of filling all gaps.

Where advisable to do so, this custom-tailored policy can include other types of coverage as well, such as Workmen's Compensation.

The features of this policy make it one of the most popular and important Excess liability contracts sold in the insurance industry at the present time.

It is possible that your prospect may want Excess Liability Protection in only one or two of these areas. Since, as we stated earlier, this type of policy is manuscripted, i.e., custom-tailored to suit a specific risk, this request can be met. But be sure to advise the prospect that the protection he will receive is not nearly as broad as that provided by the "umbrella" type of coverage.

EXCESS MARINE LIABILITY



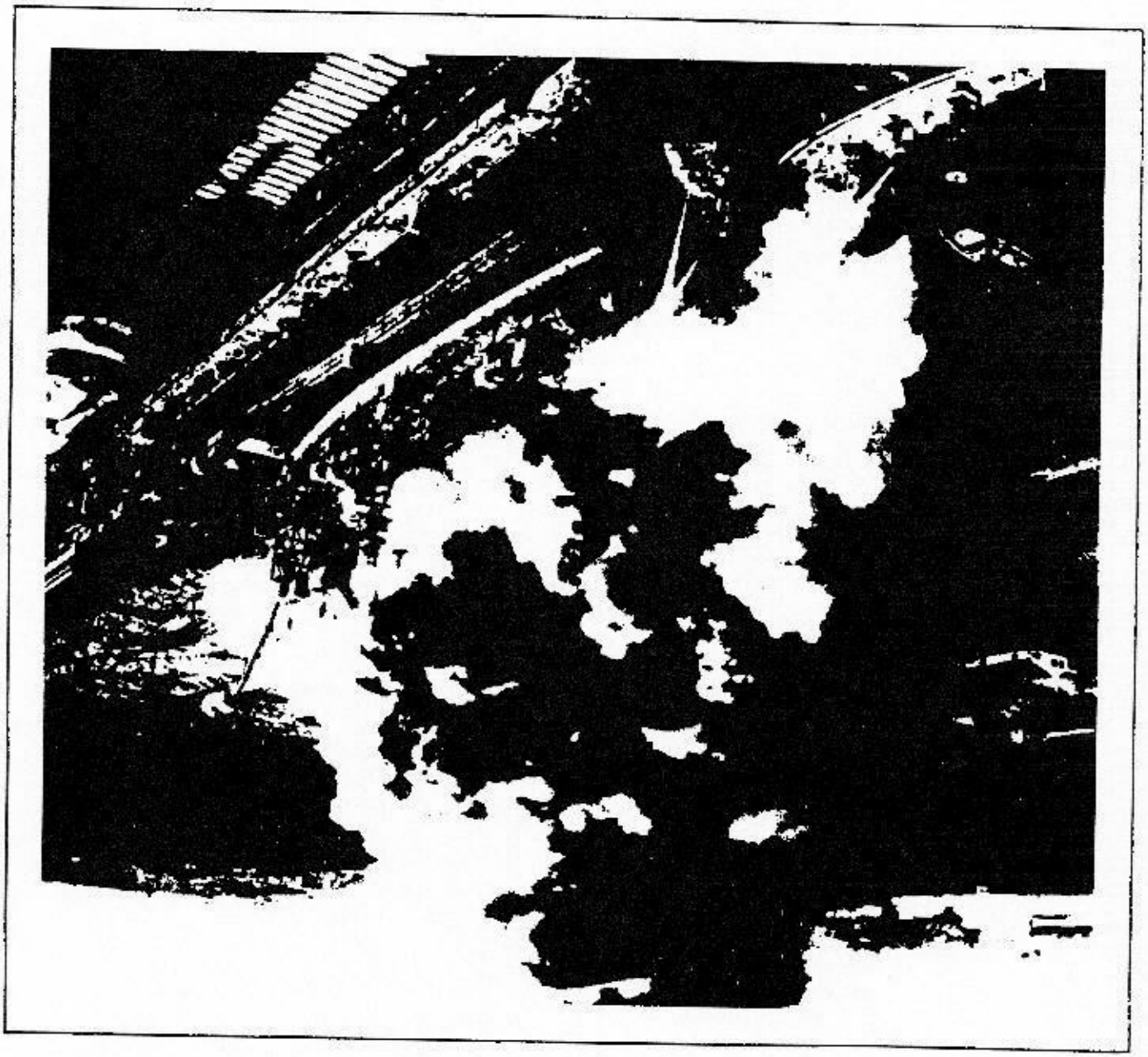
"Bumbershoot" Coverage

The "Bumbershoot" policy covers all the following areas (with many important fringe benefits):

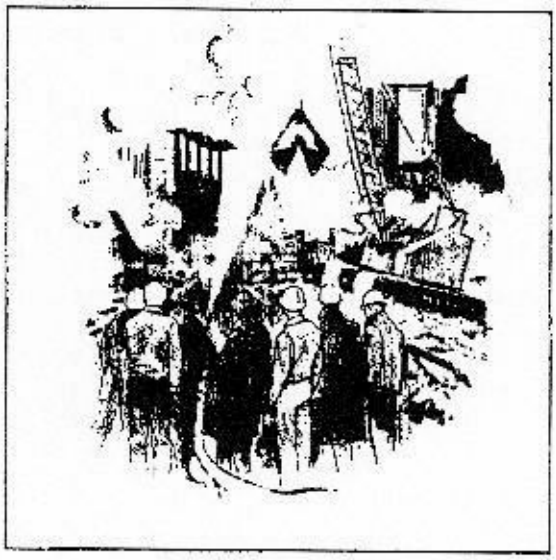
- Protection and Indemnity
- Collision Liability
- Towing Liability
- Wharfinger Liability
- Marine Liability
- Stevedores' Liability

It is, of course, possible for a client to obtain EXCESS Marine Liability insurance for protection against only one or several of these individual risks.

In these situations, the limits of the risk for which The HOME provides EXCESS coverage are clearly defined and understood. When the prospect realizes the extent to which his present primary insurance program may be inadequate, he may more fully appreciate the values of the "Bumbershoot" policy. It has the same "extensive and popular" features described on Page 8 in connection with the "Umbrella" coverage.



EXCESS PROPERTY INSURANCE



*"Parasol" Coverage**

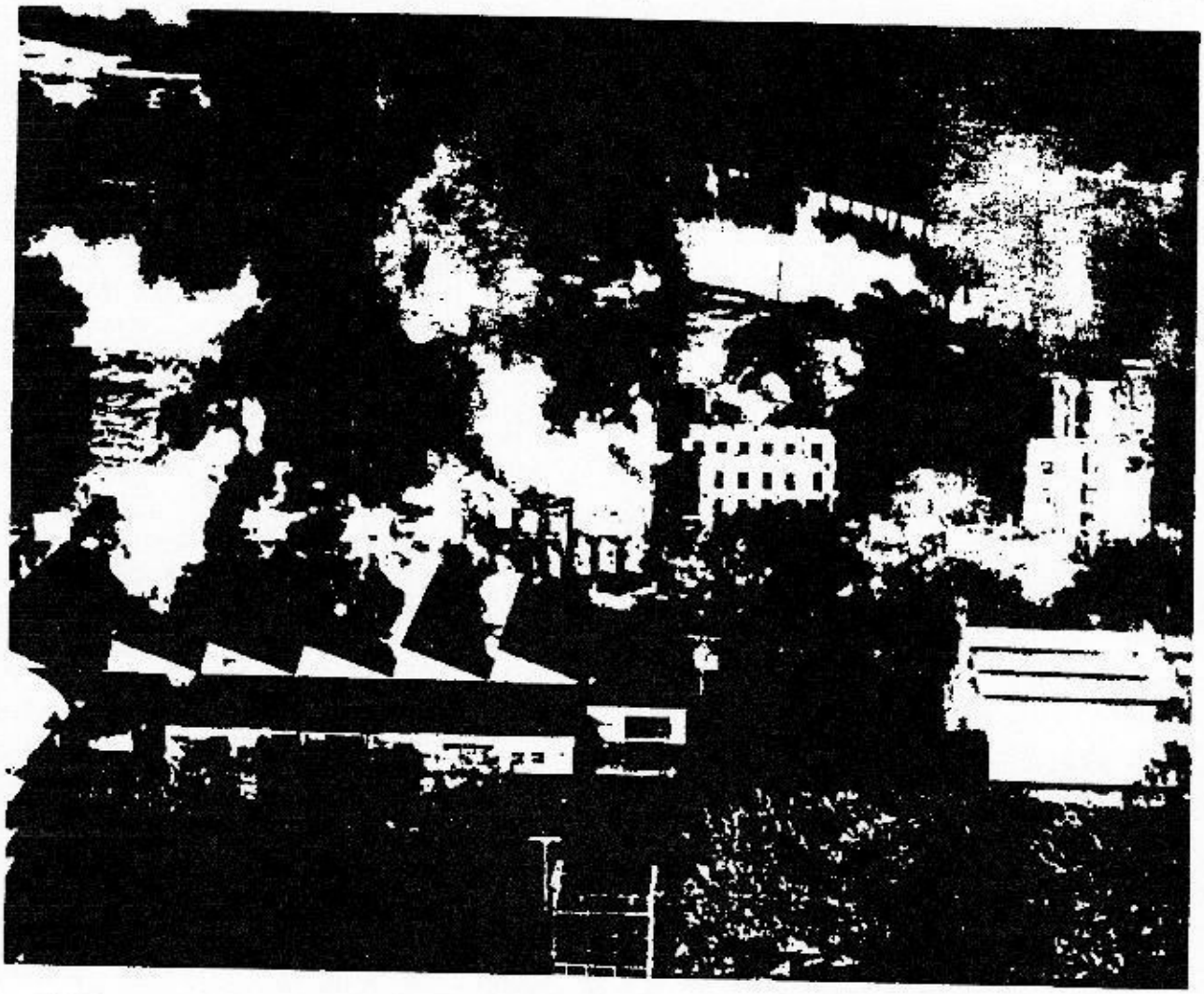
The "Parasol" policy offers protection for EXCESS property losses—direct and consequential—over reasonably large deductibles. It applies to:

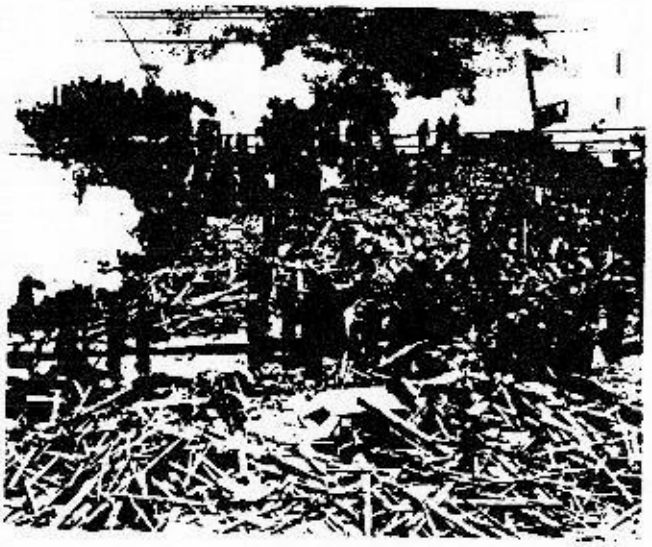
- Physical damage to buildings, structures, contents and equipment.
- Flood and collapse
- Fire
- Named peril or "All-Risks"

As in the other two areas, the "Parasol" policies provide general coverage and include fringe benefits. But here, too, the client may obtain specialized insurance against one or more risks through a separate policy.

Always remember that all EXCESS Coverage policies are tailor-made to the specifications laid down by the client, in conjunction with his agent, and that each policy must be agreed on, individually.

**Often referred to as "All Risks," Difference in Conditions, or Difference of Conditions.*





OTHER COVERAGES AVAILABLE

In addition to the specialized policies briefly discussed, some of the more popular excess coverages written by the Excess Lines Dept. are:

- Excess Auto for fleets
- Excess General Liability
- Excess products
- Excess motor truck cargo
- Specific Excess Workmen's Compensation
- Aggregate Excess Workmen's Compensation

These are just a few of the specific excess lines written.

THE BEST IN THE BUSINESS

Since we introduced our Manuscript Excess Liability policy in 1961 many other companies have entered the field. However, their "umbrella" type policies have been changed over the years to a more restrictive type coverage in many important areas. In most instances this has been prompted by the revisions in the revised primary liability policies where more restrictive changes have been incorporated. In addition, the rapidly changing economic and legal picture has resulted in other restrictive amendments.

This has been confusing to agents and brokers and insureds as well, who are confronted with many types of coverage under the banner of "umbrella".

What do we offer? We offer a contract that remains as broad as first developed to meet the competition of London Underwriters. It is tailored to meet your clients' needs today as well as in the future. In general terms, it consists of Excess General and Automobile liability insurance PLUS *coverage for hazards not normally available in primary liability policies.*

Compare our Manuscript form with the other leading competitors "umbrella" policies, on the chart to the right. You can't escape the conclusion that the Home's "umbrella" policy, in terms of coverage, is Number 1. Over 25% of Fortune's 500 major industries are protected under the Home's manuscript form.

COMPARISON OF POLICIES*

FEATURES	HOME POLICY	CO. A	CO. B
1. Definition of Insured	Broad	Limited	Limited
2. Personal Injury Definition	Broad	Limited	Limited
3. Property Damage Definition	Broad	Limited	Limited
4. Contractual	Broad	Limited	Limited
5. Occurrence	Broad	Limited	Broad
6. Watercraft	Broad	Limited	Limited
7. Aircraft	Broad	Limited	Limited
8. Care Custody and Control	Broad	Limited	Limited
9. Ultimate net loss clause	Broad	Broad	Limited
10. Territory Covered	World Wide	Limited	Limited
11. Assault & Battery	Included (Follows Primary)	No Provision	Included (Follows Primary)

**We strongly recommend that you secure copies of competitive policies and compare in detail the coverages and definitions outlined in the comparison chart.*

HOW TO PROSPECT FOR EXCESS COVERAGE

The preceding pages have made it clear, we believe, that a tremendous volume of business exists in this field.

The need for this type of insurance is accentuated by the inflationary trends which exist today. It is further stimulated by corporate research which develops new products with new potentials for liability. And it is expanded by corporate diversification and world-wide operations. Developments of this order call for *sufficient* coverage, *automatic* coverage, available through Excess lines of insurance which back up the protection in the primary policies.

To develop this volume intelligently and *productively*, it is most important that the first thing you should do is to *become thoroughly familiar with The HOME contract.* Your Fieldman will be happy to provide you with a copy.

Read the newspapers for *local* examples which have resulted in extremely high verdicts for the plaintiffs, or catastrophic damage to business operations. It may be worthwhile for you to check the newspaper files to uncover older cases which your prospect will undoubtedly remember when you call them to his attention.

Check your expirations to spot present clients who may have need for EXCESS coverage at this time.

Study the local directories, the rosters of local business clubs, the Yellow Pages, etc. for the names of other firms in these fields which are likely to have risks of the types outlined.

Call "Home" for any assistance you may need to write this highly profitable business.

The ATTORNEY'S Umbrella Book™

Analysis of Commercial General, Umbrella
And Excess Liability Forms

VOLUME 1

Introduction •

Underlying Coverage •

History Of The CGL Policy •

Occurrence Policy Comparison Charts •

Claims-Made Policy Comparison Charts •

Policy Terms, Conditions & Definitions •

Aggregates •

Endorsements •

Appendix •

History of the Umbrella Liability Policy

Numerous excess liability insuring forms were developed and introduced during the 1930's and early 1940's. One of the most popular excess lines during this period was automobile liability. This was largely because primary limits were usually inadequate, often written at very low levels; the minimum manual or financial responsibility limits in many cases. As the need for higher policy limits evolved, a new kind of policy was designed. This new policy was intended to be excess or following-form of specific underlying liability coverages. Bodily injury and property damage liability exposures were often covered by separate excess policies. This approach proved cumbersome, as it was necessary for an insured to have many different excess policies in order to attain comprehensive catastrophe protection for all its liability exposures.

Two distinct methods of providing excess coverage were used:

1. A certificate, which was following-form over the underlying insurance, was generally attached to the underlying policy. A separate premium charge was made for the certificate. This represented a simple method of providing additional limits, but was limited by the breadth of the underlying insurance.

2. A separate policy, complete in itself, was the other method used to provide catastrophe coverage. Like underlying insurances, the policy contained its own declarations, insuring agreements, definitions, exclusions, and conditions. Although such policies were often following-form of the underlying insurance, it also was possible to broaden the terms of the policy. This approach was the genesis of the modern umbrella policy.

Umbrella Origins

The practice of providing catastrophe protection for many different kinds of liability exposures through the use of a single blanket policy soon became the preferred method. It is unclear by whom or for whom the first true umbrella policy was written. As with many other types of insurance, Lloyd's of London was apparently the originator of umbrella-type liability coverage. Their original name for the policy was "blanket catastrophe liability insurance." The term *umbrella* was later coined by the London market to facilitate ease of cabling and survives today as a descriptive icon for catastrophe liability coverage. Minimum underlying insurance limits or a self-insured layer of $25,000 were usually required by insurers in order to keep the catastrophe limits of the umbrella policy remote from "working layer" primary losses. Such arrangements preserved the higher-limit umbrella policy for true "catastrophe" protection and permitted it to be written for a more reasonable premium.

One unpublished source[1] on the history of umbrella liability stated that:

> *The umbrella policy was introduced in the United States in the middle or late 1940's, through the joint efforts of Lukis, Stewart and Company and certain large American brokerage firms, working through the London brokers, Price, Forbes and Company . . . The consensus of industry opinion points to the American brokerage firm of Marsh and McLennan as being instrumental, if not solely responsible, for initiating the umbrella movement.*

A study by the Northern California Chapter of the Society of CPCU[2] was published stating that the umbrella policy was originated by Lloyd's Underwriters in London and introduced in

[1] Berry, Robert Benjamin. *Umbrella Liability Insurance.* Unpublished MBA thesis, Wharton School, University of Pennsylvania, 1961.

[2] *CPCU Annals*, Winter 1960

REFERENCES AND NOTES

the United States, probably first in Massachusetts, in 1947. An interesting passage from this report reads, in part, as follows:

> *The original purpose of the new form was to provide in one policy, additional limits of liability, often not available in the domestic market, over all exposures covered by underlying insurance; and, in addition, to provide protection for exposures not normally insured under a primary program, as well as excess coverage over those areas voluntarily self-insured.*
>
> *As nearly as our committee could determine, the form was brought to the attention of the American insurance buyer by a large brokerage firm somewhat as a sales gimmick. Its appeal to the large buyer of insurance was through providing superior protection and perhaps higher limits for the same premium or a lower premium by a new method of marketing coverage. The mechanics were to revamp the conventional liability program by depressing the bodily injury limits to $25/50,000 or perhaps as low as $10/20,000 and to reduce the property damage limits to a similar low level.*
>
> *An umbrella policy would be placed as excess in a single limit from $500,000 up to provide the total coverage needed. This procedure was successful in cracking the domestic market's increased limits scale and it delivered a better insurance program at the same time. Unfortunately, it also defeated the original intent of the umbrella form which is that of a catastrophe form. At these low levels of underlying coverage, the umbrella was practically primary insurance, especially for the large corporation.*

Early umbrellas often were written for limits which were the difference between primary limits and $500,000. It became more common later to purchase umbrellas as multiples of $1 million excess of underlying coverage.

One of the main attractions of the new form was the possibility that by depressing the limits of the primary policy one would save more than the cost of the umbrella. Apparently, only a short time elapsed from the umbrella policy's introduction to the advent of these abuses.

Early Insurers

American insurers first started writing umbrella liability insurance in the early 1950s. Although it is unknown precisely how many companies entered and withdrew during the early years of the umbrella's introduction, at least eight American companies were known to be offering umbrella-type coverage by 1960.

Note that we are unable to verify the accuracy of the names of insurers for which we can find no present-day counterparts.

American Reinsurance (as treaty reinsurer of umbrella underwriters)
Continental Casualty (CNA Group; began writing in late 1958)
Employer's Reinsurance (as treaty reinsurer)
Employers' Mutual of Wausau
Employers' Surplus Lines (Commercial Union Group; late 1958 entry)
General Reinsurance (as a facultative reinsurer)
Insurance Company of North America (entered market in May 1957)
Travelers (entered market in September 1959)

Because of the participation of major reinsurers in the umbrella market, many smaller insurers probably "fronted" umbrellas at that time, retaining only a small net amount, if any. All available sources indicate that the market was in a state of flux; with insurers reportedly entering, then withdrawing, from the market with some frequency.

By the early 1970's, the market became quite competitive and it is estimated that approximately 70 insurers were offering umbrella coverage. The exhibit below identifies 35 of the more common umbrella forms available in the United States during this period.

Major early umbrella insurers as reported in *The Umbrella Book*, 1976.

COMPANY OR GROUP	POLICY NAME	FORM NUMBER
Aetna Casualty & Surety	Excess Indemnity (Umbrella) Pol.	CC5258, 1-73
Allstate Insurance Company	Business Umbrella-Excess Liab. Pol.	BU 4100
American Home Assoc. Co.	Commercial Liab. Umbrella Policy	21409

COMPANY OR GROUP	POLICY NAME	FORM NUMBER
American Mutual Liab. Ins. Co.	Umbrella Liability Policy	6th Ed.
Centennial Ins. Co.	Commercial Umbrella Policy	2Q 4289C
Central National Ins. Co.	Umbrella Liability Policy	UC-30, 10-71
Chubb/Pacific Indemnity Gp.	Commercial Umbrella Liab. Pol.	21097(1), 3-73
CNA Insurance	Umbrella Excess Third Party Liab. Pol.	G-40240-C
Commercial Union Cos.	Umbrella Policy	G-9024-4C
Continental Ins.	Umbrella Liability Policy	7922-23
Employers Ins. of Wausau	Umbrella Liability Policy	515-5786, 12-74
Fireman's Fund Ins. Cos.	Supercover	5846, 9-68
Great American Ins. Co.	"Protector" Catastrophe Liab.	F23000, 5-74
Harbor Ins. Co.	Umbrella Policy	HU6095, 5-74
Hartford Acc. & Indem. Co.	Umbrella Liability Policy	6138, 1975
Highlands Ins. Co.	Umbrella Liability Policy	40 000, 3-71
Home Insurance Company	Manuscript Excess Liab. Policy	H20255F
Industrial Indemnity Co.	"Defender" Comp. Cat. Liab. Pol.	IU00R1, 8-71
Ins. Co. of North America	Excess Blanket Cat. Liab. Policy	GL-119
Ins. Co. of the State of Penn.	Excess Public Liab.	S287
Kemper Group	Comprehensive Cat. Liab. Policy	CK767, 9-74
Liberty Mutual Ins. Company	Umbrella Excess Liab. Policy	GP02867, 1-73
Lloyd's of London	Umbrella Policy (London 1971)	SLF5200, 1971
Midland Ins. Co.	Umbrella Policy	UND 200, 7-74
Mission Equities (Sayre & Toso)	Umbrella Liability Insurance	S&T 110, 6-74
Northwestern National Ins. Co.	Umbrella Policy	25183, 4-73
Ohio Casualty Ins. Co.	Commercial Umbrella Liab. Pol.	UXC 550, 6-75
Royal Globe Ins. Co.	"Big Shield" Comp. Cat. Liab. Ins.	CL66274B
Safeco Ins. Group	Commercial Topnotch Insurance	C-1985 R4 7-75
St. Paul Fire & Marine Ins. Co.	Umbrella Excess Liab. Policy	22091, 11-73
Stonewall Ins. Company	Umbrella Liability Insurance	D-1A, GLA9P(99) 4-74
Transamerica Ins. Co.	Commercial Umbrella Policy	T-828-PU-A, 1-73
Travelers Indemnity Co.	Catastrophe Umbrella Policy	1-4815, 8-73
United Pacific/Reliance Ins. Co.	Excess Umbrella Policy	PKP6149, 1-73
U.S. Fidelity & Guaranty Co.	Comprehensive Excess Indemnity Pol.	CEP1, 1-73

Early Umbrella Coverage

The first umbrella policies provided very broad coverage. They contained only a few of the exclusions and limitations found in modern policies. As a result, claims under these early umbrella policies generated substantial losses which underwriters had not anticipated.

Some of the more notable features of the early umbrella forms included the following:

Personal Injury: Originally, personal injury coverage was extremely broad. The policy definition included the words "but not by way of limitation" before a small list of injuries. Thus, coverage was virtually unlimited. Anything might be covered, including alienation of affections, unfair business practices, and even damages to partnerships or corporations — encroaching on the property damage liability coverage. When underwriters realized this, they attempted to define personal injury more carefully, but with sufficient breadth to satisfy the needs of most insureds.

Exclusions: *All* exclusions were conditional. Thus, the exclusion would only be applicable if an underlying policy exclusion also applied, or if there was no underlying coverage at all. However, there still could be problems if non-concurrent exclusion wording were interpreted differently by the primary and umbrella insurers.

Property Damage: Property damage liability was covered on an *occurrence* basis. This was considered quite controversial in the 1950s. Prior to 1960, occurrence was defined to mean an event or continuous or repeated exposure to conditions which unexpectedly cause injury during the policy period. The word "unexpectedly" was deemed to be necessary to preclude any attempt to cover results of insureds' acts that were reasonably foreseeable. It was about 1960 that the term "occurrence" was modified with the additional word "unintentionally." Most umbrellas currently refer to the phrase ". . . which unexpectedly or unintentionally causes personal injury, property damage or advertising liability . . ."

Care, Custody and Control: There usually was no exclusion for property rented, loaned to or in the care, custody or control of the named insured. In present day umbrellas, this is still an important limitation which is treated inconsistently.

Intangible Property: Intangible property was covered. As provided by the original Lloyd's property damage definition, "The term 'property damage' shall include, but not by way of limitation, damage to or destruction or loss of property."

Aggregates: There were no aggregate limits.

These broad contracts were often written for a period of three years, and were modestly priced. Rates began to increase drastically by 1959. It was no longer possible to save the cost of the umbrella by reducing primary limits to unrealistically depressed levels.

Lloyd's Restricts Coverage

Lloyd's shocked umbrella buyers in January 1960 by introducing a new umbrella form which was more restrictive than many of the primary insurance programs being written. Important new restrictions included the following:

- All exclusions were absolute.
- Personal injury was restricted and defined by a list of enumerated perils.
- Property damage was defined as "damage to or destruction of tangible property."
- A new warranty was added, which read "This policy shall not apply to any claim arising from a pre-existing event or condition which to the Named Assured's knowledge might give rise to a loss hereunder."
- Contractual liability was restricted to "written" contracts only.
- A new exclusion was added, which read "This policy shall not apply to liability of the insured arising from any negligent act, error or omission which is a breach of professional duty on the part of the assured in the conduct of the assured's business."
- Advertising liability coverage was removed. It was originally included in the personal injury coverage, and had been so broad that reportedly some claims for patent infringement were paid. Underwriters had never intended to cover such losses.

The "errors and omissions" exclusion was an attempt to settle the problem of prior claims which arose from "business risks." But the pre-existing condition warranty was an especially fertile area for denying coverage, because every event in an insured's history might at some point result in a loss.

Advent of Present Coverage

Lloyd's, responding to an outcry from brokers and insureds, found an acceptable compromise in a modified form introduced in June 1960. In this form:

See Lloyd's umbrella policy, Appendix section, page LLP-1 to LLP-3.

- Property damage was defined as "loss of or direct damage to or destruction of tangible property (other than property owned by the Named Assured)."
- Blanket contractual liability coverage for oral contracts was restored.
- The "business risk" (errors and omissions) exclusion and pre-existing condition warranty were removed.
- Advertising liability coverage was restored, but with the limitations found in nearly all umbrellas today.
- A new definition of occurrence was introduced.
- Four of the eight exclusions were conditional, which meant that the exclusion was not applicable if there was underlying coverage. These were the following:

  Assault and battery
  Owned aircraft
  Owned watercraft
  Fellow employee injury

- The remaining standard exclusions were absolute:

  Workmen's compensation
  Faulty workmanship
  Advertising limitation
  War

Most of the important changes to umbrella forms occurring since this time have been in response to developmental changes in the underlying general liability policy. The Insurance Services Office, Inc. (ISO) has made substantive changes to its commercial general liability policy, revising it in 1966, 1973, 1976 (BFCGL), 1981 (BFCGL) 1986, 1988 and 1993. Perhaps the greatest impact on umbrella wording was subsequent to introduction of the 1986 CGL policy.

Because of the numerous changes embodied in the 1986 form, ISO prepared advisory material to assist insurers in developing their own commercial umbrella liability policy forms for use in conjunction with ISO's new Commercial General Liability (CGL) policy forms (both occurrence and claims-made versions). However, there was no universally accepted standard umbrella form. The policies issued by insurers continue today to vary widely in coverage scope and format.

Vol. 3, p. ISO-1.

The ISO advisory policy form text was organized in separate sections that could be combined to generate the type of policy wording desired by each insurer. The ISO advisory material could be used to create three separate policy formats.

REFERENCES AND NOTES

1. Excess coverage
2. Extended liability coverage
3. Umbrella liability coverage

For various reasons, most insurers largely ignored this advisory material when drafting their commercial umbrella policies. They continue today to rely instead on their own wording or the wording found in the forms of other insurers.

The practice of borrowing wording from other forms often gives an illusory appearance of standardization of umbrella policies. In reality, while the wording used by some insurers may be similar, important differences usually exist. Changes in the scope of the basic umbrella form are often made by insurers based on individual underwriting philosophies and adverse legal rulings on certain policy wording. Also, the addition of a single endorsement can drastically alter the scope of coverage.

Evolution Of the Umbrella Liability Policy

Robert S. Gillespie

Blanket catastrophe liability insurance with a "drop down" into areas uninsured or underinsured is now a permanent part of the insurance programs of industries large and small.

By ROBERT S. GILLESPIE

Vice President
Indemnity Insurance Company
of North America
Philadelphia

FOR many years, and until approximately five years ago, it was the practice of the insurance buyer to require his primary carrier to take the General and Automobile Liability Insurance limits of liability up to very substantial amounts.

Where catastrophe insurance was needed to supplement primary insurance, the excess underwriter would issue a certificate of excess insurance, a useful device in increasing the underlying limits to the desired level while, at the same time, extending upward the terms and conditions of the primary policies. There were other arrangements, of course, which could be made for the provision of catastrophe coverage, but the certificate method prevailed.

About 1955 that interesting phenomenon known as the "Umbrella" Policy came upon the scene, and swiftly became the vehicle for the provision of catastrophe insurance for a very great number of risks throughout the country. As a company which writes a substantial volume of excess business, INA was in a position to observe the diminishing use being made of certificates of excess insurance as the result of the vigorous marketing of Umbrella Policies. Here was a policy which improved upon the terms and conditions of underlying insurance while providing the catastrophe limits required by enterprises of all kinds and sizes.

The Umbrella Policy is designed to float above primary Automobile, General and Employers' Liability Policies, and to "drop down," as we say, to a stipulated amount, usually $25,000, where underlying insurance is not carried but where the loss falls within the terms and conditions of the catastrophe policy. Excess of aggregate coverage is provided in the event of the reduction or exhaustion of general liability aggregate limits. The dramatic element which caused the policy to be so widely bought was its unprecedented breadth of coverage, including undefined Personal Injury Liability coverage, Property Damage Insurance on an unlimited occurrence basis, and broad coverage for property rented to, occupied or used by, or in the care, custody or control of the insured. A feature which also endeared the form to producers and insurance buyers was the provision that, by virtue of the conditional operation of its exclusions, all coverage provided by the primary policies declared by the insured, where broader, was absorbed into the Umbrella Policy. It was not long before the new policy was described as a kind of errors and omissions coverage for insurance buyers, and as one broker put it, "conducive to their worry-free slumber."

Umbrella Concept Not New

The Umbrella Policy concept really was not new. INA had written over the years many Blanket Liability Policies on an individual risk basis, combining such classes as Automobile Liability, General Liability, Workmen's Compensation and Employers' Liability, Protection and Indemnity, Non-Ownership Aviation Liability, and miscellaneous subsidiary features of coverage required to meet the specifications submitted. The form often operated in excess of underlying insurance with varying limits, merely by rising above such policies, and, of course, applied in excess of the stated retention where self-insurance prevailed. The Umbrella Policy itself, however, was new, and certainly unique, in that it was marketed freely upon the completion of a simple questionnaire, and judging from many premiums charged which have come to my attention, with only a casual exploration of the hazards involved.

INA quickly placed its Blanket Catastrophe Liability Policy in competition, calling it "Big Top." It met with gratifying success.

There is no denying that the principle of Blanket Catastrophe Liability Insurance, with a drop-down into areas uninsured or self-insured, is now a permanent part of the insurance programs of industries, great and small. I think it is an exciting and challenging development which widens the field of flexibility granted to the insurance manager in planning an adequate portfolio and calls for acumen on the part of the underwriter. The Blanket Excess Policy should not be

a coverage substitute for a properly-designed and underwritten primary insurance program, nor should it operate in lieu of proper limits carried under primary policies. The Umbrella Policy has been doing both.

Several years ago I was informed by a producer that he was able to save his clients substantial sums of money merely by reducing the limits of liability of primary Automobile and General Liability Policies, to, say, $25,000 or $50,000, and applying the Umbrella Policy in excess of the reduced limits. He went on to say that the cost of the catastrophe policy was defrayed in many situations to the extent of almost 100 per cent, and in some over 100 per cent, by the offsetting effect of the premium saving derived from the reduction of the primary limits. The transaction was, at the same time, providing greater total limits of liability and coverage than ever before available. Having been trained entirely by an insurance company whose philosophy is that it is entitled to a reasonable profit, I have never been able to figure how this works.

Drop-Down in Three Hazards

The drop-down feature of the Umbrella Policies has been coming into play in connection with three important hazards, each of which has been a problem for underwriters and insurance buyers for many years. I refer to injury to property rented to, occupied or used by, or in the care, custody and control of the insured; liability for personal injury, and "occurrence" property damage liability. Of course, the excess coverage could drop down in other areas of varying importance, depending upon the characteristics of the underlying insurance and the presence of self-insurance.

Before discussing the three hazards mentioned, let me observe that drop-down probably has occurred reluctantly in ways unplanned by the excess underwriters, growing out of differences in the terms and conditions of the primary policies and the catastrophe cover. It is evident that where a primary policy and an excess policy express the same condition or exclusion in materially different ways, thereby failing to dovetail efficiently, the possibility is always present that the carriers will not agree as to the application of their respective policies to a loss situation. As the excess policy invites itself into a loss position by virtue of a drop-down operation, the primary carrier may be encouraged thereby to accept the invitation by being more literal in the interpretation of its policy than might otherwise be the case. At the same time, the excess carrier is not going to concede that the wordings of the two policies do not have identical meanings, thus preserving the elevated point of attachment of its policy. Here is a wonderful opportunity for the semanticists to have a field day!

Passage of time ultimately may ease the perplexing problem if the evolution of primary and excess policies tends to draw carriers closer together in their wordings.

Problem With Wording

As an interesting exercise in the non-concurrence of primary and "umbrella" wordings, I recommend that you review the Product Liability Insurance provided by the two forms. Compare the definitions of the product hazard and the exclusions pertaining to that hazard, not overlooking, of course, other relevant terms and conditions. There is no need for this lack of concurrence. If the Blanket Excess Policy is to establish a drop-down position through the broadening of traditional basic wordings, it should be done by exceptions to such wordings, the creation of additional interpretative language or the elimination of certain terms or conditions.

Let me get back to the three important areas of the planned drop-down of Umbrella Policies. The first is concerned with injury to or destruction of property rented to, occupied or used by, or in the care, custody or control of the insured. The Umbrella Policy has been offering coverage without qualification, except as to owned property, and apparently will continue to do so. Covering such property is, I think, a diminishing issue between primary underwriters and their insureds, for in recent years much realism has been displayed by underwriters in the satisfaction of reasonable requests for coverage. Many insureds are content to self-insure a first loss in this area, thus avoiding the weighing of primary premiums to reflect an exposure that is difficult to rate from the ground up, but which can be measured reasonably well in excess of, say, $25,000, to $100,000. The Blanket Excess Policy, therefore, is a convenient vehicle for working out a program for this hazard along individual lines.

Difficulty in Contractual Liability

Underwriters generally encounter difficulty in handling, on a blanket basis, Contractual Liability Insurance as respects injury to or destruction of such property, particularly leased real property of substantial value, where the liability assumed by the insured goes beyond the statutory or common law liability resting upon the insured in the absence of the contract. Assumptions of liability under lease agreements can create exposures which approximate and often exceed the fire and Extended Cover perils insured in an orderly fashion by the fire companies.

In an age of lease-back arrangements, extraordinary property values, complicated corporate families and the presence in policies of cross-property damage liability provisions, Blanket Contractual Liability Insurance as to leased property calls for a thorough examination of the exposures and the Physical Damage Insurance program involved. Individual risk negotiations almost inevitably will result in mutually acceptable coverage and premium and avoid the possible absorption of losses which should remain the risk of the industry or the physical damage insurers.

Drop-Down in Personal Injury

The second important area of drop-down invited by the Umbrella Forms, one which I believe is being discontinued in revised forms entering the market at this time, has been Personal Injury Liability Insurance where the

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Returning to Philadelphia in 1944, he worked in the special risks department and was named department superintendent in 1947. He was elected assistant secretary of the Indemnity Company in 1950 and special risks secretary in 1953. He was named assistant vice president in 1955, and vice president in 1959. Mr. Gillespie was one of the principal architects of the special insurance contracts which were written by the Indemnity Company on the *Nautilus*, the world's first atomic powered submarine. This article is taken from a speech delivered by Mr. Gillespie to the Insurance Buyers Association of Detroit, and expresses his view of the Umbrella Policy. In the January issue of THE LOCAL AGENT, we published a quiz analysis of the Big Top Policy by H. Thompson Stock.

term "personal injury" stands without limitation. Modern definitions of "personal injury" include a long and serviceable list of individual "perils." Causes of injury have been added from time to time, and surely additional ones will be added in the future in a manner which will establish their insurability. I gather from what lawyers tell me that the term has no substantive meaning in the law of the kind to make it useful as a foundation for the building of policy coverage. The unrestricted sweep of "personal injury" can include virtually any cause of injury to the person, from alienation of affections or mayhem to loss of good will or reputation, and from unfair business practices to obstructing justice or maintaining a monopoly.

Personal Injury Can Include Businesses

To confuse the matter even more for the underwriters, I am told that, although "personal injury" seems literally to limit its application to injury to natural persons, it can embrace injuries sustained by partnerships and corporations, thus invading the purview of the Property Damage Liability coverage. Undefined Personal Injury Liability coverage is sufficiently troublesome, but when we join it in the same policy with undefined occurrence Property Damage coverage, and embrace "loss" of property as well as its injury or destruction, we have just about issued a blank check. I do believe that the modern definitions of "personal injury," as found in Blanket Primary and Excess Liability Policies, are capable of doing a good job, and that where insurance for an additional cause of injury is required, the consequences of which are deemed to be insurable, individual risk negotiations should result in agreeable terms.

It was as long as 15 years ago that the first effort was made to provide so-called occurrence Property Damage Insurance by introducing a definition of "accident." The purpose of the definition was, of course, to recognize by positive language the fact that injury to property is not always due to a sudden, unexpected event, identifiable as to time and space, but can be the unexpected result of continuous or repeated exposure to conditions, often apparently normal conditions, present in activities and operations of industries. There followed many long years of experimentation with definitions, with virtually every carrier coming out with one or more versions of its own. I have an interesting collection of these wordings, many of which are vague and indefinite and, while purporting to broaden the coverage, only serve to leave it open to doubt.

Resistance to Accident Interpretation

What was happening? At the risk of oversimplification, let me sum it up by saying there was resistance on the part of insurance buyers and producers to the manner in which the phrase "caused by accident" was being interpreted by carriers relative to the unusual and unprecedented kinds of losses coming in with greater frequency and with potentially greater cost to the underwriters. Some unfortunate litigation occurred which perhaps should have been avoided. Gradually the definition of "accident" gave way to the elimination of the word from many policies and the substitution of the word "occurrence," accompanied at first by assorted definitions of the new word. It was inevitable, I suppose, that in time the trend should reach the point of the word "occurrence" standing alone and without any definition at all. That is what happened, most frequently in the area of catastrophe exposures, with the advent of the Umbrella Policy and the uninhibited occurrence Property Damage Liability Insurance provided by that form. "Occurrence" coverage has been its major attraction and the third and most active field of drop-down we are discussing here.

Standard Wording Needed

As I said earlier, the underwriters of the Umbrella Forms appear to have wearied of the effort to ward off business risk claims with their defenses immobilized, and are evidently returning to a definition of "occurrence" which brings the policy into play only where there is direct injury or destruction of tangible property and where such injury or destruction is unexpected or unintentional. I expect there will be renewed efforts on the part of the industry at large to draft a Property Damage Insuring Agreement which will be acceptable in most risk situations, and I think there is general agreement that, as respects the great majority of businesses, a standard wording is badly needed. Those risks with complicated and diversified operations admittedly require special treatment, and I feel the insurance industry is prepared to do all that is reasonably required in order to provide acceptable insurance. As reputable buyers of insurance do not want coverage for their business mistakes or for such things as perpetuating a nuisance, they should be prepared to accept a basic definition of "occurrence," and then solicit consideration of special elements of coverage which they feel they rightfully should have and are not getting under the "occurrence" definition.

I believe we are witnessing the beginning of the end of the very prolonged and difficult birth of a new concept of Property Damage Liability coverage. If carriers are really serious about discarding the excesses of policywriting arising out of competitive eagerness to acquire business, I think we will make real progress in bringing order to a very confused corner of the insurance business. If not, the era of subsidization of industry will continue until losses dictate otherwise.

Trend Toward Retrospective Ratings

A pattern of corporate liability insurance is developing beneath the Big Top and the Umbrella. Retrospective rating practice has long been the most attractive technique for handling larger risks with respect to general liability, automobile liability and workmen's compensation hazards not self-insured. It has been interesting and gratifying to me to observe a decided trend toward greater use of retrospective rating in the insurance programs of medium-size industries, and even small industries where sufficient premium can be generated by the three lines of insurance in combination.

What motivates this trend? It is difficult to avoid oversimplification in answering this question, for individual risk situations can always be advanced to confound the expert. However, it is my opinion that insurance buyers have become more sophisticated and analytical in their approach to cost-plus insurance. They recognize, I believe, that in the long run insurance costs in the first-loss area of General and Automobile Liability Insurance will be lowered if retrospective rating is employed. The limits of liability normally subject to a retrospective rating plan range from $10,000 to $25,000 in a varying pattern. The calculation of guaranteed-cost premiums in this area calls for a permissible loss ratio low enough to permit the underwriter to accumulate reserves for periods of hardship forecast by the prior loss pattern or by the presence or anticipation of dangerous or diversified operations. Under a cost-plus plan the possible redundancy thus created is reasonably certain to flow back to the insured over a period of time, with the company retaining only premium enough to cover losses, expenses, a contingency fund dependent upon the placement of the maximum premium factor, and a reasonable profit.

The flexibility of retrospective rating practice in most jurisdictions, and

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Speaking of NEW BOOKS

PROPERTY AND CASUALTY INSURANCE, *by Dr. Curtis M. Elliott, Professor of Economics and Insurance, University of Nebraska. Published by McGraw-Hill Book Co., 327 W. 41st St., New York 36, N. Y., for the "National Association of Insurance Agents—McGraw-Hill Bookshelf" series. Price $6; 196 pages.*

Property and Casualty Insurance is the first volume in a new series treating every phase of the insurance industry. The series is entitled the "National Association of Insurance Agents—McGraw-Hill Bookshelf" and is the result of the cooperation of the NAIA and McGraw-Hill Book Co.

Stressing policy coverage, the book presents the multiple-peril as well as the specified-peril approach in modern insurance programs. The nature of risk and the function of insurance, the organizational structure of the industry, common types of policies, and legal aspects of contracts are among areas covered. Using numerous explanatory examples, the book also treats fire, automobile, general liability and workmen's compensation, and multiple-line insurance. In addition, an account is provided of the industry's marketing system.

Designed to serve both as a reference source for the veteran, and as a guide to the novice in the field, the book includes coverage of such aspects as the carrier and the agent, general liability coverage for a business, Inland Marine Insurance, and Homeowner's Insurance.

The author, Curtis M. Elliott, is Professor of Economics and Insurance at the University of Nebraska. He also serves as Educational Consultant to the National Association of Insurance Agents, and as Rate Consultant to the Nebraska Department of Insurance. ■■

Umbrella Liability Policy

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especially in the handling of national and multi-state risks, has given it an important part to play in a well-designed foundation insurance program.

High Maximum Premium Factors

I observe also a growing interest on the part of industrial management in high maximum premium factors in order to shrink the contingency fund in the plan to its lowest level. Obviously, the higher the maximum premium factor the less the retrospective underwriter needs to hedge against a wave of adverse loss experience. As one insurance manager put it recently, upon being asked why he selected a renewal proposal with a very liberal penalty: "Let's face it. We would like to self-insure the first $25,000 of loss but we realize it is not feasible for a number of reasons. We look on our retrospective rating program as a method of approaching as close to self-insurance as possible. We are really buying claim and safety service, and there is little point in paying the company an insurance charge for a risk we would like to take ourselves."

Limits of $25,000 Too Low

It may interest you to know that, in establishing an upper limits program, several larger firms doing business with my company have elected to establish a self-insured interval immediately above the limits retrospectively rated and up to as much as $50,000 for any one occurrance. I am sure they deem a venture of this kind to be a

SORRY — NEXT PAGE MISSING