
ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

Do you have a procedure for handling this key umbrella issue?

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Virtually every year, approximately 5% of errors and omissions (E&O) claims involve umbrella coverage. Some involve allegations of failure to place, failure to suggest, or exclusions in the umbrella form that the client was not aware of. Another primary issue generating E&O claims involves gaps where the underlying limits were not at the required level. As all agents should be aware, when listing a line of business (such as auto, boat, etc.) as underlying coverage on an umbrella policy, umbrella carriers require those underlying lines of business to be at a specific minimum level. When a loss occurs and the underlying limits are less than the required level, a “gap” occurs – and this “gap” then becomes the responsibility of the client. In most situations, this is when the client sues their agent.

The following claim example further illustrates the issue:

The umbrella carrier required a \$500,000 combined single limit (CSL) for the underlying auto coverage. The agency had advised the umbrella carrier that there was a \$500,000 CSL in place for the client and the umbrella policy was issued showing this \$500,000 limit. In actuality, the agent had only secured a 250/500 policy instead of the \$500,000 CSL. A serious accident occurred resulting in significant bodily injury to a person in the other car. The case was settled for \$3 million, with the auto carrier paying their \$250,000 limit and the umbrella carrier paying \$2.5 million –the umbrella carrier factored in the \$500,000 limit the underlying auto policy was supposed to be at. This resulted in a \$250,000 gap, which became the amount of damages sought by the agency client when they sued the agency. Lacking any real defense in the matter, the agency lost.

It is important for agents to realize that the underlying limits required by umbrella carriers are not always the same. There should be a strong focus on this issue, especially when the underlying coverages and the umbrella coverage are not with the same carrier. In addition, when an agency moves the umbrella to a new carrier, there should be a procedure to verify the underlying limits requirements of the new carrier.

Best practices include:

- **When possible, the various underlying coverages and the umbrella should have a common effective date.** If they don't, work with the various carriers to accomplish this.
- **When proposing umbrella coverage (new and renewal), the agency should know what the underlying limit requirements are and verify that those limits are in place.** The required underlying limits may change, so be sure to know what the requirements are at the time of each subsequent proposal (new and renewal).

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- **If the agency looks to move the umbrella, identify the requirements for the new carrier you are considering.** They may not be the same.
- **Discuss with the client all of the coverages that can be scheduled (including UM/UIM if allowed) for the umbrella to respond at the time of a loss.** If some of the policies are not written with your agency, advise the client in writing what the requirement is. Secure a dec page of those policies. It is definitely suggested to advise the client –again, in writing –that if any of the limits of the underlying coverages change, your agency must be notified, and that failure to do so could result in a portion of any loss not being covered.
- **Do not write just the umbrella coverage!** This is a formula for disaster. If the client is moving their coverage to your agency, it is best to start with the various underlying coverages such as the auto and homeowners. It is not suggested to start with the umbrella policy.

Another key issue involves the handling of claims where there is an umbrella in place. It is always suggested to put the excess carrier on notice, especially when the underlying claim involves death, dismemberment, brain or spinal injury, some other type of serious injury or a lawsuit. Even if the underlying carrier and the excess carrier are the same, it is suggested to put each on separate notice.

Bottom line, every agency should have a procedure requiring a total review of the umbrella requirements and whether those limits are being satisfied at the time of the placement of the umbrella or any of the underlying coverages.

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