

## A Closer Look

# Personal Umbrella Liability Policy: A Must-Have Insurance



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## In Brief

- While serious accidents are rare, they do happen. If they happen to you, and you're found responsible, the consequences can be catastrophic to your wealth and lifestyle if you don't have sufficient insurance coverage.
- Unfortunately, many people don't have the umbrella, or excess, liability insurance that could protect them in the event of a legal judgment against them. And when they do have it, the coverage amounts are often inadequate — particularly for those with substantial wealth.
- Thankfully, the remedy is straightforward. Obtaining adequate liability coverage to protect your assets is relatively easy and surprisingly inexpensive.
- Bessemer Trust's Insurance Advisory Group is available to evaluate clients' personal liability exposure and recommend tailored insurance policies designed to optimize asset protection, among other capabilities.

What happens if you're in a car accident with serious injuries and fatalities — and it's your fault?

Or a houseguest slips on your staircase and suffers major trauma?

Or your child is accused of cyber-bullying, resulting in emotional harm and reputational damage to a schoolmate?

You have automobile, homeowners, or watercraft insurance, but how much financial protection do these policies offer? Regrettably, not as much as you may need. Since these policies have coverage limits that rarely exceed \$500,000, they're not likely to make much of a dent in your financial obligation — at least not with the large legal judgments often associated with serious accidents.

Maybe you have additional insurance — umbrella (also known as personal excess) liability insurance. This form of insurance can be helpful when the financial limits on your primary automobile, homeowners, or watercraft insurance are exhausted. But is the amount of coverage in the personal umbrella liability policy enough? Chances are this is not the case, since most insurance companies cap their umbrella liability coverage at \$5 million. If you have more than \$5 million in assets, you could be particularly vulnerable in the event of a serious accident.

When your insurance coverage falls short of a legal judgment against you, you could be facing court-ordered liquidation of your assets, starting with your savings and investments, and then proceeding to your real estate and personal property. Garnished income is another possibility.

Such a devastating outcome is especially unfortunate because it can be so easily avoided. If you don't already have an umbrella policy, it's straightforward to acquire and remarkably affordable. If you do have one, but the financial limits are insufficient — as is so often the case for those with substantial wealth — the remedies are equally straightforward.

## What is Personal Umbrella Liability Insurance?

Personal umbrella liability insurance helps protect your assets — all of your assets — from major claims and lawsuits. Since it is additional insurance, it provides liability coverage

above the limits of your primary homeowners, automobile, or watercraft policy, up to the coverage maximum you've purchased in your particular personal umbrella liability policy.

Basically, the policy sits on top of the liability insurance that is included in a homeowners, automobile, or watercraft policy, and it begins to pay when the limits are reached on those policies.

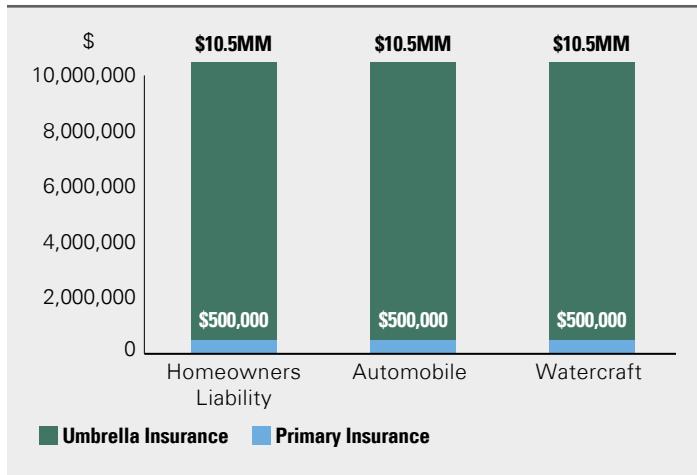
And since this is additional insurance, you generally need to have specific minimum primary liability coverage amounts on the underlying homeowners, automobile and watercraft policies to make sure there is no gap between when the primary liability policy stops paying and the personal umbrella liability policy begins to pay.

For the most part, umbrella liability coverage mirrors the liability coverage in the primary homeowners, automobile and watercraft policies (known as "follow form" coverage). That said, there are exceptions where coverage at the primary level is not mirrored in the umbrella policy (these are known as "exclusions"), or where coverage that's not provided in the primary policy can be covered in the personal umbrella liability policy (this is known as drop-down coverage).

When the umbrella coverage drops down, some insurers make you responsible to pay for a small portion of the covered loss, usually \$500 or \$1,000 (these are known as self-insured retentions, or deductibles).

Overall, the parts of a personal umbrella liability policy should work together to provide you with the comprehensive liability protection you need.

### Exhibit 1: Umbrella Liability Policies Sit on Top of Primary Policies



### What Does a Personal Umbrella Liability Policy Cover?

Personal umbrella liability policies typically cover claims related to bodily injuries — as well as personal injury (which includes libel, slander, and defamation) — and property damage caused to a third party for which the policyholder is determined to be legally responsible.

Although they are not available with all insurance companies, some additional umbrella coverage options may be appropriate:

- **Uninsured/under-insured motorist coverage.** A good number of insurance companies offer this option within a personal umbrella liability policy, assuming it is already provided in the primary automobile policy. If you're in a car accident or hit as a pedestrian and the other party doesn't have any — or enough — liability insurance to pay for your compensatory damages (medical bills, long-term care, pain and suffering), your primary policy would pay these expenses. You can purchase additional uninsured/under-insured motorists coverage in a personal umbrella liability policy. Since a good number of people don't have automobile insurance or take the minimum automobile liability limit, adding uninsured/under-insured motorists coverage for yourself and any passengers in your car is well worth considering, especially since the cost is fairly reasonable. It's also worth noting that, since most health care policies don't include long-term care insurance, personal umbrella uninsured/under-insured motorist coverage could be prudent. And the same applies to pain and suffering; this coverage option is the only way to insure costs related to your pain and suffering.

- **Employment practices liability insurance** pays for judgments relating to the employment of domestic staff — wrongful termination, discrimination, sexual harassment, and other wrongful employment practices. When it's available (few insurance companies provide it), this is actually primary — not excess — insurance. It's generally subject to a deductible of \$10,000, and coverage is typically \$250,000 or \$500,000 for each claim with an annual claim limit. For those with larger staffs, high staff turnover, and a history of similar problems, this coverage could be particularly valuable.

- **Not-for-profit directors and officers (D&O) liability insurance** provides excess coverage for not-for-profit directors and officers and trustees for errors, omissions, negligent acts or breaches of duty as well as employment practices claims. Limits of financial protection are typically \$1 million. While it's true that not-for-profit organizations likely will have their own insurance and also provide indemnities, it may be insufficient to cover claims in a serious lawsuit or when multiple directors and officers are sued. Primary coverage of at least \$1 million per claim for the not-for-profit organization is a prerequisite for obtaining excess coverage above this financial limit. Once the limits of the organization's D&O policy are exhausted, you — as a director or officer of the not-for-profit organization — now have additional financial protection all your own.
- **Family trustee liability insurance** is difficult to get (only one personal umbrella liability insurer offers it), but it can be important for anyone serving as a fiduciary for a family trust, particularly anyone who isn't a professional fiduciary, given the complex requirements of the role. Similar to not-for-profit directors and officers insurance, this coverage pays for the trustee's errors, omissions, negligent acts or breaches of duty in the management of the family trust.

## What's Not Covered?

Personal umbrella liability policies don't cover everything. Policy exclusions typically include the following:

- **Aircraft.** If you own an aircraft (or own shares of an aircraft), you won't be able to cover it with your umbrella liability policy, although you may be able to obtain some coverage in the event that you charter an aircraft with a professional crew. In general, though, you'll have to make sure you have adequate coverage on your aircraft policy.
- **Watercraft.** Coverage for watercraft is not automatically included for a vessel longer than 26 feet and with more than 50 horsepower in a personal umbrella liability policy and will — if it happens to be an available option — need to be added. Even if added to your policy, it may not be the sort of coverage that

you need. For example, personal umbrella liability policies don't provide Jones Act or Longshoreman's coverage, which is similar to workers' compensation insurance for the captain and crew who work on and off the vessel. This coverage is only available in a primary watercraft policy or an excess protection and indemnity policy, which is like an umbrella policy, but only for watercraft.

- **Intentional acts.** If you purposely injure a person or damage someone's property, your umbrella policy won't pay — and neither will any of your underlying policies for that matter. Intentional acts are non-insurable, as they would create a "moral hazard." Nevertheless, the insurer may have the duty to defend a claim until a court finds an act was indeed intentional.
- **Business pursuits.** Most policies exclude insurance for your business, typically defined by insurers as a trade, profession or occupation engaged in on a full-time or part-time basis for income purposes. The only types of exceptions here relate to incidental business pursuits — but the specific definition of an incidental business varies depending on the insurance company (and not all insurance companies offer this coverage). Coverage definitions are based on the amount of gross revenue earned from the business, the number of employees, how many hours they work, and whether or not they are subject to workers compensation or other similar insurance regulations. If the incidental business is farming, the coverage definition might also include the number of sales in general, and the number of animals sold in a year. If your business activities fall outside these parameters, obtaining commercial insurance may be advisable.

## How Much Do You Need?

At Bessemer, our general advice is to consider taking a personal umbrella liability policy with a coverage amount that is at least equal to your net worth, up to \$20 million dollars.

For the purposes of determining the financial limits in a personal umbrella liability policy, include net worth assets such as properties, stocks, bonds, savings,

non-qualified retirement accounts, revocable trusts, fine art, and other possessions. Assets protected from creditors such as irrevocable trusts, qualified retirement accounts, and residences guarded by homestead laws are not included.

Also include five to ten years of income from irrevocable trusts, qualified retirement accounts, and other sources of income needed to pay future expenses. While funds inside irrevocable trusts or qualified retirement plans are shielded from legal judgments, creditors can seize assets that exit these otherwise protected accounts. The umbrella liability limits need to be high enough to pay creditors; this way the distributions from protected accounts do not need to be turned off, if they can be at all.

Why \$20 million? Almost all liability judgments (settlements are private) against individuals and families are under \$20 million, with a few outliers that go above that amount.

That said, if you have a low tolerance for risk and/or an elevated risk exposure — maybe there's someone in the household who doesn't have a good driving record, or you own a piece of property with a public right of way and a lot of traffic — more than \$20 million of coverage could be prudent.

### How Do You Get Large Amounts of Umbrella Coverage?

While it's true that most mass-market insurance companies limit personal umbrella liability coverage to a maximum of \$5 million, some of them will make exceptions up to \$10 million, which is great — unless you have more than \$10 million in assets or a particularly elevated risk exposure.

Fortunately, there are other options.

A select group of more specialized insurance companies focuses on the high-net-worth market. These insurers know that the people they insure often have assets well in excess of \$5 million, and they will typically offer coverage up to \$50 million, and sometimes even as high as \$100 million.

You can also obtain coverage through a **layered program**. Let's say you have a strong relationship with a particular insurance company, but its coverage maximum is \$5 million. You can acquire a second — or even a third — layer of excess coverage from other insurance companies that would sit on top of your \$5 million umbrella policy, which, in turn, would reside on top of the underlying homeowners, automobile, or watercraft policies.

Despite this opportunity, it is always preferable to work with a single insurance company, since only one insurer will defend a claim filed against you. This helps avoid potential inconsistencies in defense strategies that could arise if multiple insurance companies are involved. Additionally, having a single insurance company provide both the primary and umbrella liability insurance coverage is ideal, as it is administratively simpler. However, this is not always possible.

### What Does It Cost?

If you're wondering about the expense of umbrella insurance, you'll probably be surprised by how affordable the premiums are. Since the serious types of accidents we're talking about here are rare, the cost of insuring against them is relatively low.

The cost of coverage varies based on several factors, such as the number of homes, cars, and boats you own; how many drivers you're insuring and their driving records; your occupation (some occupations tend to result in more claims than others); where you live (urban areas tend to be more costly due to higher auto accident rates); the particular insurance company; the limits of coverage you're purchasing; and how much coverage you already have in your underlying policies, among other considerations.

To illustrate how some of these factors can affect the premium for a personal umbrella liability policy, consider these two scenarios for a family living in downstate New York (see Exhibits 2 and 3).

## Exhibit 2: One Residence, Two Cars, Two Drivers with No Youthful Drivers

Personal Umbrella Liability Limit	Annual Premium	Cost per \$1 million
\$1MM	\$375	\$375
\$5MM	\$750	\$150
\$10MM	\$1,230	\$123
\$15MM	\$3,780	\$252
\$20MM	\$6,330	\$317

Note: For illustrative purposes only. Premiums reflect a composite of major insurance company premiums as of August 2016. Actual premiums will vary based on the particular insurance company and individual situation.

## Exhibit 3: Three Residences, Four Cars, One Boat, Three Drivers with One Youthful Driver

Personal Umbrella Liability Limit	Annual Premium	Cost per \$1 million
\$1MM	\$425	\$425
\$5MM	\$1,245	\$249
\$10MM	\$2,532	\$253
\$15MM	\$4,605	\$307
\$20MM	\$7,600	\$380

Note: For illustrative purposes only. Premiums reflect a composite of major insurance company premiums as of August 2016. Actual premiums will vary based on the particular insurance company and individual situation.

Roughly speaking, the annual cost per million dollars of coverage typically averages from \$100 up to \$500. At coverage amounts greater than \$5 million or \$10 million (depending on the specific insurer), insurance companies often purchase reinsurance, which causes the incremental cost per million dollars of coverage for these greater limits to jump significantly higher, to as much as \$600 or more.

With regard to layered programs, premiums will rise as the coverage amounts increase, but usually not to the same degree. Consequently, a layered program with multiple stacked umbrella liability policies actually could be price competitive and possibly less expensive than a single-policy program. These savings must be contrasted with the benefits of a single umbrella liability

policy, such as the coordinated defense of a claim and the program's ease of administration. These benefits may outweigh possible premiums savings.

## A Note on Group Personal Umbrella Liability Programs

While group personal umbrella liability programs are typically available through an employer, or to members of certain associations or organizations, they are also available to families.

Families of 10 households or more can leverage their purchasing power to buy umbrella liability insurance on a group basis. In such cases, the family purchases one policy, although individual households within the family obtain their own insurance with the coverage amounts they choose.

There are two important advantages here: there tends to be less underwriting for individual family members, and sometimes no underwriting at all once the policy has been issued, since the insurer is not examining driving records or scrutinizing the number or types of houses, cars and watercraft, such as rental properties, sport cars or speed boats that a family member owns; and the insurance is sold at a significant discount — up to 70% or more in certain cases.

For a family with 30 households participating in a group personal umbrella liability program, the following chart demonstrates the substantial savings compared to Exhibit 3 above.

## Exhibit 4: Large Families Can Lower Premium Costs Dramatically

Umbrella Liability Limit	Group Premium	Cost Per \$1 million	Percentage Savings
\$5MM	\$802	\$160	35%
\$10MM	\$1,336	\$140	47%
\$15MM	\$1,910	\$191	58%
\$20MM	\$2,903	\$145	62%

Note: For illustrative purposes only. Premiums reflect the situation of a specific family with 30 households for a one-year term starting January 1, 2016. Actual premiums will vary based on the particular insurance company and the family's individual situation.

### Additional Considerations: Finding the Gaps

It's important not to take policy options for granted, since a coverage gap in the underlying primary policy will create coverage gaps in the umbrella policy. One gap to watch out for involves personal injury, which includes libel, slander, and defamation.

For instance, the personal umbrella liability policy may not specifically include personal injury coverage. And if the primary homeowners policy excludes personal injury coverage (it's not always automatically offered), the umbrella policy, which mirrors the primary policies, will not provide coverage as well.

Another financial exposure to consider is the potential void between the end of coverage limits in the primary policies and the beginning of coverage limits in the umbrella policy. For example, if the primary policy has a \$100,000 coverage maximum, but the umbrella policy doesn't provide coverage until \$300,000, you could be responsible to pay \$200,000 of a loss.

Also, when properties are owned by a trust, limited liability company (LLC) or other entity for estate or tax planning, asset protection or privacy purposes, it is important to add the entity to the personal umbrella liability policy as an insured, in addition to adding it to the underlying homeowners, automobile or watercraft policies. Should an accident occur at a property owned by a trust or LLC, the entity will likely be sued as the owner, putting its assets at risk.

For instance, a plaintiff suing a trust for injuries resulting from an accident at a home owned by a qualified personal residence trust could seize the property in a judgment. While titling property in the name of the entity can cordon off personal assets from being claimed when injuries result from an accident at the property, the assets held by a trust or LLC would remain at risk. You will want to consult an insurance professional about properly structuring the policy to protect the trust, LLC, or other entity.

### How Bessemer Can Help

At Bessemer, we believe that a complete family wealth plan should include property and casualty insurance reviews. Perhaps the most important policy we look at is personal umbrella liability insurance — since it works to protect all of a client's assets.

Our Insurance Advisory Group is available to evaluate our clients' personal liability exposure. We can help to identify and quantify potential exposures to financial loss, analyze existing insurance programs for adequacy, recommend tailored insurance programs designed to optimize asset protection, help to secure insurance policies and endorsements through best-in-class brokers and insurers, and coordinate real and personal property appraisals, among other capabilities.

Serious accidents can be catastrophic, but — with appropriate insurance coverage — they don't have to be.

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