

## Ask an Expert Two for Tuesday Challenge

Bob is driving his own car to the office supply store. He is doing an errand for his employer, Acme Anvil Co. He has a personal auto policy with \$300,000 of liability coverage, collision, and a Personal Umbrella [PUP] of \$1,000,000. Acme has a Business Auto Policy [BAP] with hired and non-owned auto coverage at a limit of \$1,000,000. Acme's insurance includes "Employees as Additional Insured" [EAI].

Bob causes an accident that results in damage to his car and \$10,000 damage to a stopped vehicle. There are three passengers in the car who all claim injuries of various severity. They sue Bob and Acme. The court awards the injured passengers \$500,000 from Bob and \$750,000 from Acme.

Bob's auto insurance pays for the damage to his car (less deductible), his legal expenses and up to \$290,000 of the judgment (his \$300,000 limit of liability less the \$10,000 paid for the damage to the other vehicle.) Acme's insurance pays for their legal fees and the \$750,000 award, leaving just the judgement against Bob in excess (\$210,000) of his PAP coverage.

**With regard to the judgment against Bob in excess of his PAP: Which do you think would kick in first, Bob's PUP or Acme's EAI? Why?**

### EAI Pays

The policy that should kick in first should be the Policy of ACME. ACME has an endorsement that provides coverage under their policy, to provide Liability coverage for their employees who are operating their own vehicles on business errands. The amount of this coverage affords the same liability limit for the employee, as that afforded to Acme. Although the employee does have his OWN personal umbrella liability policy, which normally would be providing coverage to the employee as excess over the required minimum underlying limits of the employee's auto liability insurance, it is my belief that the insurance provided by the ACME policy for the employee, would be considered additional UNDERLYING INSURANCE, and would be applicable prior to the insured employee's umbrella policy.

Acme's EAI would be next as the PUP would be in excess of all other underlying coverage.

Acme's would kick in first being Bob's Personal Umbrella is Excess coverage, and Acme's coverage employees.

The Acme's EAI will pay out before the PUP because he's covered on Acme's policy under employees as additional insured and it won't get as far as his personal umbrella. They will cover any legal responsibility Bob has in the accident as the employee.

It will be Bob's Personal Umbrella first as coverage first from person's personal auto and umbrella then to employer's EAI for any amount over Bob's limits of coverage

The Employer's BAP responds first (as excess over the employee's PAP, which, by definition, includes the employer as AI) due to the addition of "Employees as AI" end't, then the Employee's PUP. However, depending on the wording of the PUP, the PUP and the BAP could conceivably both contribute to the excess, equally by limits or equal shares.

The Acme policy would kick in first because an Umbrella policy is meant to be Excess over any collectible insurance and the BAP policy would be excess over primary auto.

It would be the EAI first because he is an employee doing an errand for his employer at the time of the accident.

The named insured's BAP, by application of the "Other Insurance" provision, actually applies as excess. But even with the Employees as Insureds endorsement, the employee's personal auto policy (PAP) remains the primary protection. However, if the total of bodily injury and property damage exceeds the employee's PAP limits, the BAP with the CA 99 33 attached will respond as excess on behalf of BOTH the named insured and the employee.

Other Insurance under personal umbrella; This coverage is excess over any other insurance available to an "insured", except insurance written specifically to be excess over this coverage.

### PUP Pays

First Bob PUP. Due insured is primary that will follow vehicle.

Bob's Personal Umbrella would respond first.

The PUP would kick in first due to the 'follow form' coverage in the umbrella policy. Since the insured's auto policy is primary, so would his excess insurance be.

The PUP would respond to the additional \$210,000 due for the injuries. I am going to assume there is an "other insurance" provision in the EAI that would dictate that.

Bob's PUP would respond first as it will be primary even though he is an Additional Insured under ACME's policy.

Since he was at fault in the accident as the driver of the vehicle, Bob's PUP would pick up the balance of the judgment against him personally. The PUP company could try to subrogate against Acme's EAI as some coverage is extended to the non-owned auto since he was on an errand for the employer but ultimately he is still responsible for his driving.

Bob's PUP would kick in first because his auto insurance is primary & the PUP would pick up where his PAP left off.

### Both Pay

Assuming we're using standard ISO forms for the Hired & Non-Owned Auto (HNOA) and the Personal Umbrella Policy (PUP) coverages, we can assume both policies are subject to the Other Insurance provision. Consequently, with the HNOA coverage applying in excess of the PAP and due to the 'Other Insurance' provision in a standard ISO PUP, both policies would respond to the remaining \$210K in excess of the PAP's payout, and they would both pay half since the PUP will only pay its pro-rata share based on policy limits that apply to the loss.

Consequently, the HNOA pays \$105K and the PUP pays \$105K.