

SPECIAL FEATURE

Ask an Expert Responses:

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?

Here are [the responses from the Two for Tuesday readers](#). The winner (chosen at random) of a \$10 gift card is Karen W Smith of Walter O. Rogers Insurance Agency LLC (NY).

Below is the [Ask an Expert](#) response from Chris Boggs of [Virtual University](#).

Here is the reality of the "business use" exclusion in the ISO PAP - effectively, there ain't one other than public or livery conveyance exclusion (which is absolute, but alive with ambiguity - but that's a story for a different day). However, there are non-ISO PAP forms that do exclude ANY business use; I wrote [an article](#) on it. Most PAPs I've seen follow the ISO language and coverage business use other than public or livery conveyance. Further, the PAP includes liability coverage for the use of non-owned autos (as excess over other insurance) - but that's not the conversation for today.

In ISO's PAP, the employer is granted protection as an insured IF they can be and are held vicariously responsible for the accident. So, as we discussed, the PAP is primary for the named insured (the employee) and the employer. Lacking an umbrella or excess policy, the BAP is secondary - for the EMPLOYER only. And to add insult to injury, the employer's BAP can subrogate against the employee to recover any loss it pays. Why? Because in the situation described, the employee is NOT extended insured status in or by the BAP because of the exclusion for the owner of the non-owned vehicle:

1. Who Is An Insured

The following are "insureds"

- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except ("except" means there is no coverage for):

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.

Enter the Employees as Insureds (CA 99 33) endorsement. This doesn't change the order of payment (the PAP is still primary), it simply extends coverage to the employee if the claim exceeds the employee's coverage.





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When the umbrella is added to the mix, is the order changed? It depends on the umbrella/excess policy in place. In general, I believe the BAP will still be excess because of the Other Insurance wording in the BAP which, in relation to non-owned autos, reads: "5. Other Insurance a. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance."

Many if not most personal umbrella/excess policies state that the coverage is excess unless another form is written or responds specifically as excess. Since the employee is not a named insured on the BAP, any coverage the BAP provides is specifically excess. The named insured's policy or policies logically apply as primary because that's who caused the accident. The BAP is excess because it is protecting the entity vicariously (not directly) liable for the injury or damage.

How is Hired and Non-Owned coverage added to the BAP? When Symbol 1 is used, there is no need for any other symbol. Any liability symbol other than Symbol 1 requires the use of Symbol 8 (hired) and Symbol 9 (non-owned). Symbol 9 extends to the employee-owned auto.