

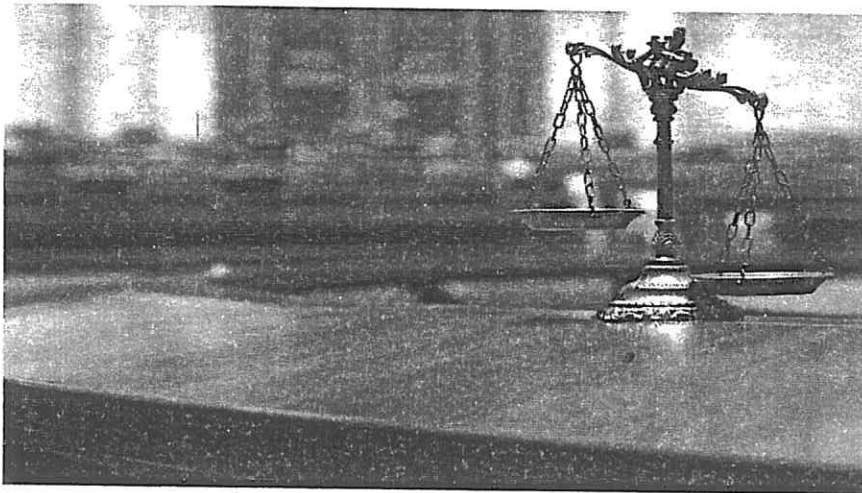
Learning Unit 13: Extended Personal Liability



Learning Outcomes

Upon completion of this learning unit, it is expected that you will be able to:

- Understand and provide definitions for terminology.
- List who we insure for extended personal liability.
- Describe what we insure under extended personal liability.
- Identify what we do not insure (exclusions) under extended personal liability.
- Identify the underwriting rules relevant to the insurance of extended personal liability.



Introduction

As mentioned in learning unit 2, we live in an age of court cases and litigation. People sue each other and large organisations for negligible reasons. Thus, it seems sensible (and perhaps even essential) that those who wish to make use of litigation do indeed have access to extended personal liability insurance. The same applies to those people who, by the nature of what happens in their lives, stand a strong chance of being sued – or are, themselves, inclined to sue!

This is often referred to as umbrella liability insurance. It is considered essential for most individuals and families because, although protection for building, household goods and vehicles has been acquired, this would not give adequate protection against lawsuits. In fact, with awards increasing, the liability cover under these sections could be sadly inadequate when facing a major personal injury lawsuit.

Therefore, the best protection against the threat of a lawsuit is to purchase an umbrella liability insurance policy. Umbrella or excess liability insurance provides additional liability coverage for specific risks once a policy's coverage limit has been exhausted. It also provides additional liability for certain risks that would not be covered by the primary insurance policy.

This learning unit considers what is covered by extended personal liability insurance and what specific circumstances are excluded from this insurance.



It is important that the distinction is clearly made so that you are able to best advise the client when discussing it with them.

13.1 Definitions

Word or phrase used	Definition and description
you, (your, yourself)	<p>The phrase you refers to the policyholder and anyone insured under this section. This must be clearly defined at the inception of the policy.</p> <p>Although one individual is named in the policy schedule, there are times when a family is relatively large and extended family members, such as parents or grandparents, who live with the policyholder on a permanent basis need to be included in the cover provided. For this reason, the definition is extended to include anyone insured under this section.</p>
we (us, our)	<p>This is Mutual & Federal Insurance Company Ltd. Registration No: 1970/006619/06.</p>

Word or phrase used	Definition and description
accidental	An occurrence, which produces loss, damage, death or injury and which takes place unintentionally and unexpectedly.
accidental loss	Something taking place unexpectedly, unintentionally or by change or something that is lost.
breach of promise	A breach of promise is a failure to keep a promise, for example, a promise of marriage or a failure to perform some promised act or obligation.
compensation	Compensation means the insurer will pay the insured the amount stated in the schedule.
costs	<p>Costs are the financial settlement to the winning party for the expenses of the litigation. Costs are incurred by the solicitor from the moment he/she takes control of the case. In most personal injury matters, costs will be recovered in full from the losing party (defendant) and, in almost all cases, will be paid by an insurer for that party.</p> <p>Any legal costs and expenses claimed from any third party and/or anybody acting on his/her behalf, for example, his/her attorney or insurance broker against the insured would be covered in terms of the policy wording.</p> <p>It is important to remember that the insurer must give permission for the costs the policyholder would incur to settle or defend any claims made against him/her.</p>
debts	Debt is that which is owed. A person who owes debt is called a debtor. People or organisations often enter into agreements to borrow something. It is a financial obligation to a lender, and the amount of debt and interest paid is agreed upon over a designated period.
excess	This is the first amount which must be paid by the policyholder before a claim is settled.
What we do not insure (exclusion)	<p>An exclusion is a condition in the policy that more accurately defines the risk accepted by the insurer and excludes liability for loss not intended to be covered.</p> <p>Exclusions in the policy relieve an insurer of liability for those issues not intended to be covered.</p>
fine	A fine is money paid as a financial punishment for the commission of minor crimes or as the settlement of a claim. It is also an amount of money assessed to a user who has overdue or lost material. Students must pay any fines they owe before they are permitted to register for class again.
legally liable	The concept of being legally liable includes all bases upon which liability may be founded, for example, negligence, liability without fault and liability under statute.
ownership	Ownership is the relationship of an owner to the item possessed.

Word or phrase used	Definition and description
	It is the act of having and controlling property.
penalty	Penalty is an extra payment or charge required of the borrower for deviating from the terms of the original loan agreement. Usually levied for being late in making regular payment or for paying off the loan before it is due, known as "late charges" and "prepayment penalties".
territorial limits	The countries where one can be insured.
third party	Another person.
underlying insurance	This means an active insurance policy you have with an insurer in or outside South Africa that insures you for: <ul style="list-style-type: none"> • Personal Liability; • Houseowner's Liability; • Householders's Liability; • Motor Liability; • Watercraft Liability, <p>With an insurer outside South Africa providing cover for Motor or Watercraft Liability</p>

13.2 Who we insure

The following people if named in the schedule, are insured under this section:

- The policyholder;
- Members of the policyholder's family who live with them.

13.3 What we insure

In this section, the insured is covered for specific events which include those discussed below.

Liability claims which result from events anywhere in the world

This insurance applies when the insured is held liable for any amount as a result of an event which occurred during the period of insurance anywhere in the world.



The insurance only applies if the insured has an active underlying insurance policy that insures the type of liability that the insured is held liable for and:

- The underlying insurer does not cover the liability for any reason except if the insured fails to comply with a condition of the underlying insurance policy.

- The compensation that the insured is liable for is more than the limit of compensation covered by the underlying insurance, and the underlying insurer has paid or agreed to pay the full amount of that limit.
- The insured's underlying policy is active and the insured is not in breach of the conditions of the underlying insurance policy.

13.4 Compensation

Compensation for this section includes the following:

- The amounts the insured is liable for;
- Legal costs of the other person that the insured is liable for;
- Costs that the insured incurs to settle or defend the claim against himself/herself with the permission of the insurer.



The policy wording further states that the insurer will only compensate the insured above the following amounts:

Personal Liability section	R5 000 000
Vehicle Liability section	R5 000 000
Watercraft Liability section	R1 000 000

Limit of compensation

The compensation is limited to the amount shown in the schedule at the time of the Insured event. This amount applies to any single event or for a series of incidents that are the result of one event in any 12-month period.

Liability for pollution or contamination

This cover applies when the insured is held liable for pollution or contamination which occurred during the period of insurance. However, the pollution or contamination must have been caused by a sudden, unforeseen, unintended and unexpected event.



In order to better understand this liability, we need to reflect on some general definitions.

pollution	<p>The harm done to a natural environment, such as air, water or soil through contamination with either natural or synthetic (manufactured) material. Such contamination may be deliberate, accidental, direct or indirect.</p> <p><u>Examples:</u></p> <ul style="list-style-type: none"> • Throwing garbage into a dam makes the water unhealthy for fish, birdlife and unfit for humans to swim. • Indirect pollutants can enter our water supply from groundwater and through runoff water that contains agricultural fertilizers and pesticides or improperly disposed of industrial waste.
contamination of water	The introduction of sewage or other foreign matter into water that will make the water unfit for its intended use.
contamination of air	An impurity in the air that can cause harm to human health or the environment.
contamination of the soil	The introduction of impurities into the ground. This can have a negative effect on farming, for example.
sudden	Something happening without warning or in a short space of time, for example, a sudden storm.
unintended	The event or situation wasn't meant to happen.
unexpected	Something that is not anticipated. It is something that happens or comes quickly and without warning, for example a sudden unexpected development.

Compensation

The compensation for Liability for pollution or contamination includes the following:

- The amounts the insured becomes liable for;
- Legal costs of the other person that the insured becomes liable for;
- Costs the insured incurs to settle or defend the claim against him/her with the permission of the insurer.

Limit of compensation

Cover for pollution or contamination is limited to the amount shown in the policy schedule at the time of the insured event. This amount applies to any single event or for a series of incidents that are the result of one event in any 12-month period of insurance.

5.2. Excess

The excess amount is shown in the policy schedule for this section.

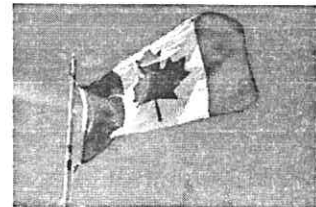
13.5 What do we not insure (exclusions)

In terms of the policy wording under this section, the insured is not compensated for any of the following:

Judgements or settlements under US or Canadian law

The insurer will not compensate the insured for:

- Any award or settlement made in countries that follow the laws of the USA or Canada;
- Any order made to enforce an award or settlement made in the USA or Canada.



Liability related to your work, business and property

The insurer will not compensate the insured for liability related to:

- The insured's employment, business or profession. This includes if the insured sells anything or provide services for any form of payment
- Hiring out any property, whether movable or immovable for money or any other benefit, unless the immovable property is used as a private home or outbuilding and is covered by the policyholder's underlying insurance;
- The insured buying, selling or swapping any movable or immovable property or any liability that results because the insured has failed to fulfil his/her obligations relating to such a sale or exchange.



The intention of this section is to cover damage and losses sustained in a personal capacity and not to cover business-related losses. More specific cover can be arranged for these types of losses via a commercial policy.

Liability resulting from reckless or deliberate acts by you

The insurer will not compensate the insured for:

- Liability claims that arise because the insured recklessly ignored the consequence of what he/she was doing or failing to do;
- Liability claims that result from the insured’s personal dishonest or fraudulent or malicious act;
- Liability claims that result from a physical assault or seduction committed by the insured.

Once again, we need to become familiar with the general terms used in this exclusion.

reckless disregard	Actions that demonstrate no concern about harm that might come to others. This is gross negligence.
dishonest	Lacking in honesty and integrity and being blatantly unmindful of what is honourable and morally correct.
fraudulent	In the broadest sense, this is a deception or con made for personal gain, although it has a more specific legal meaning. Many hoaxes are considered fraudulent, although not made for personal gain.
malicious act	An act that is wrongful and performed wilfully or intentionally and without legal justification.
assault	A crime of violence against another person. Assault is often defined to include not only violence, but any physical contact with another person without their consent. When assault is defined in this way, exceptions are provided to identify actions considered as normal social behaviour, such as patting someone on the back.
seduction	Most commonly refers to the use of sexual desire in order to persuade someone to change their behaviour to meet the desires of the seducer. It is usually implied that the seducer is acting out of a motive other than love and that the person being seduced would not ordinarily have engaged in such behaviour.

Liability between people insured under the same policy

The insurer will not compensate for Liability between people insured under this policy at the time of the event that gave rise to the Liability.

The definition of the insured person in terms of the policy wording includes the insured as well as members of his/her family who normally reside with him/her. Therefore liability would be excluded from one insured to another, for example, the insured's mother who lives with the insured and is named in the policy.

If you have other insurance

The policyholder will not be compensated for liability that results from loss or damage to property to the extent that it is covered by any other insurance policy.

Liability related to vehicles, aircraft or watercraft

The policyholder will not be compensated for:

- Any liability that results from the ownership or use of any aircraft. The policyholder will be compensated for Liability that results from the use or ownership of a model aircrafts and hang gliders;
- Any liability that relates to a law that controls the use of vehicles if:
 - By law the policyholder must insure against the Liability, or
 - The state or any government body or authority accepts Liability for the claim;

Insurers will not pay for any claims that are covered, or should be covered, by any compulsory Motor Vehicle Insurance Act. In South Africa this is known as the Road Accident Fund and payment to this fund is done by way of a levy on the price of fuel.



The territorial limits of the insured's liability cover extend beyond the South African borders. Other countries involved have their acts and the exception will apply there, if the insured incurs a liability claim in one of these other territories.

As explained above, the insurer will not pay for any claims that are covered in terms of the compulsory motor vehicle insurance act. The same exclusion will apply for countries that are outside of the territorial limits stated in the policy where the relevant acts for those countries will apply.

For example, in the case of the policyholder touring Zambia, he/she would be required to obtain a temporary import permit (TIP) at the border or depending on the country of origin, a *carnet de passage*. If the policyholder is not the owner of the vehicle, he/she would require a letter from the owner authorising the use of the vehicle in Zambia. The policyholder is also required to purchase third party insurance at the border. Should it occur that the policyholder does not purchase third party insurance at the border and is involved in a motor vehicle accident whilst in Zambia he could be liable for all the resulting costs incurred.

- Any liability for the loss of or damage to a vehicle, watercraft or aircraft that is owned, looked after or controlled by the insured;

This excludes any coverage for damage to property of other people which is in the insured's care, custody or control. This would obviously also exclude any coverage for damage to property that belongs to the insured.

- Any liability that relates to Motor Liability unless:
 - It is covered by the policyholder's underlying insurance, or
 - The only reason it is not covered by the policyholder's underlying insurance is because it falls outside the countries where the underlying insurance applies.



Any motor liability that is covered in terms of the underlying insurance would only be covered in terms of this section.


The Motor section of the Allsure policy is restricted to territorial limits and, should a loss occur resulting in liability outside of the territorial limits, it would not be covered under the Motor section and would be picked up under this section of the policy.

- Any liability that results from the use or ownership of quad bikes, all-terrain vehicles and golf cars



quad bike	Vehicle such as a motorcycle with four large wheels, designed for agricultural, sporting and other off-road uses.
all-terrain vehicle	Also known as quad, quad bike, three-wheeler or four-wheelers and is defined as a vehicle that travels on low pressure tyres, with a seat that is straddled by the operator, along with handlebars for steering control. As the name implies, it is designed to handle a wider variety of terrain than most other vehicles.
golf car	A small motorised vehicle for transporting golfers and their equipment round a golf course.

- Any Watercraft liability if the maximum design speed of the watercraft is more than 100 kilometres per hour. If the design speed is less, the insurer will only compensate for Watercraft liability if:
 - It is covered by the policyholder’s underlying insurance, or
 - The only reason it is not covered by the policyholder’s underlying insurance is because it falls outside the countries where the underlying insurance applies.

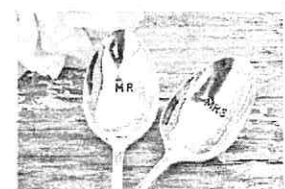
	<p>The Watercraft section of the underlying insurance is restricted to territorial limits and, should a loss occur resulting in a liability claim outside of the territorial limits, it would not be covered under the Watercraft section of the underlying insurance and would be covered under this section of the policy.</p>
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Fines and penalties

There will be no cover in terms of the policy wording for payment of any punitive damages, fines or penalties that the policyholder is held liable for, unless the insured would have been liable if there were no clauses or warranties

Consider this example:

The insured’s daughter is getting married and the insured has booked a venue for the reception. The contract signed with the venue provider states that, should the venue be cancelled within 48 hours of the actual date, a penalty of R5 000 would apply.



The insured’s daughter cancels the wedding 30 hours before the time and, as a result, the insured is liable for the penalty fee of R5 000. In this case the insured would not be able to claim against this section of the policy, as he would in all likelihood have been liable for the penalty even if the contract had not been in place with the venue provider.

Debts

The policyholder will not be compensated for any Liability related to:

- Any debt;
- The insured failing to pay maintenance;
- A breach of promise action.

HIV and AIDS

The policyholder will not be compensated for any Liability related to:

- A medical condition caused by or related to Human Immunodeficiency Virus (HIV) or any variations of HIV;
- A medical condition caused by or related to Acquired Immunodeficiency Syndrome (AIDS) or any similar condition.

Underwriting Rules

This section can only be selected together with a Household Goods, Houseowners, Motor or Pleasure Craft section.

For this policy to be in force underlying insurance cover must be in force for one of the sections as mentioned below:

- Personal liability;
- Houseowner's liability;
- Householder's liability;
- Motor liability;
- Watercraft liability;
- With any insurer outside South Africa providing cover for Motor or watercraft liability.



ACTIVITIES

Activity 1

The insured is a hairdresser and she has a salon that she runs from home. One of her clients requested that she highlights her hair. A couple of weeks later, the client contacted the insured and told her that as a result of the treatment, her hair was falling out. The client told the insured that she intends on suing the insured.

Would this litigation be covered in terms of the policy wording? Why or why not?

Activity 2

The insured is aware of an open manhole in his garden and omits to do anything about it. The insured has friends over for a braai and the children are playing in the garden. One of the friend's children falls into the manhole and breaks both his legs and an arm. The friend institutes legal action against the insured for the injuries to their child.

Would this be covered in terms of the policy wording, and why or why not?

Activity 3

The insured was flying his model aircraft around the park when he tripped and the model aircraft collided with a child playing in the park. The parents of the child indicated that they will be suing the insured for the injuries sustained by the child.

Would this be covered in terms of the policy wording, and why or why not?

Activity 4

The policyholder's son took their family dog for a walk to the local park. The dog noticed a cat and broke free from his leash to chase the cat. A child playing in the park stepped in the way of the dog and the dog attacked the child. The policyholder may be held legally liable for costs and expenses incurred due to the dog biting the child. The policyholder was sued in the amount of R10 million for the injuries to the child. The case went to the civil court and the insured was instructed to settle the third party claim to the amount of R7,5 million and to pay the costs involved of R250 000.

Would there be cover in terms of the policy wording under the Extended Personal Liability section?

Activity 5

The policyholder's teenage son was skate boarding at the local shopping mall. He reached a flight of steps and proceeded to mount and skateboard down the railing. In the process, he collided into a person walking down the steps, and the person fell down the steps. Unfortunately the person broke his neck and died as a result of the accident. The case went to the civil court and the insured was instructed to settle the third party claim to the amount of R30 million, which includes the legal costs involved.

Would there be cover in terms of the policy wording under the Extended Personal Liability section, and why or why not?

Activity 6

The insured has a holiday home in Margate, which he rents out to holidaymakers. The house is a single storey and there are sliding doors, which lead out onto the beach area. The insured has not taken any steps to indicate that there is a sliding door. One of the children of the family that was renting the holiday excitedly ran into the sliding door without realising that the sliding door was closed. The child broke his nose and his arm. The family who rented the holiday home instituted legal action against the insured for the injuries to their child.

Would these be covered in terms of the policy wording, and why or why not?



Summary

This learning unit has given the detail for extended personal liability insurance. It has described what can be covered, but, more importantly, it has described the all-important exclusions. It is necessary to identify these exclusions so that you are able to help the client in making decisions, not only about this section of the policy, but also when it is necessary to take out other insurance cover to address their unique needs. Although apparently minimal, the information needs to be absorbed, so it is important that you spend time familiarising yourself with the exclusions, in particular.

