

## COMMERCIAL LIABILITY COVERAGE (PREMISES ONLY)

The following Table of Contents shows how this Commercial Liability Coverage is organized. It will help **you** locate particular sections of this form.

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Endorsements may also apply. They are identified on the **declarations**.

Refer to the Definitions for words that have special meanings. These words are shown in "**bold type**".

### AGREEMENT

Subject to all the **terms**, and in return for **your** payment of the required premium, **we** provide the Commercial Liability Coverage described in this policy.

Policy **terms** that relate to cancellation, changes made to the policy, examination of books and records, inspections and surveys, and assignment or transfer of rights or duties also apply.

## DEFINITIONS

1. The words **you** and **your** mean the person, persons, or organization named as the insured on the **declarations**.
  2. The words **we**, **us**, and **our** mean the company providing this coverage.
  3. **Bodily injury** means bodily harm, sickness, or disease sustained by a person and includes required care and loss of services. **Bodily injury** includes death that results from bodily harm, sickness, or disease. **Bodily injury** does not include mental or emotional injury, suffering, or distress that does not result from a physical injury.
  4. **Damages** means compensation in the form of money for a person who claims to have suffered an injury.
  5. **Declarations** means all pages labeled "Declarations," "Supplemental Declarations," or "Schedules," which pertain to this policy.
  6. **Employee** includes a **leased worker**. **Employee** does not include a **temporary worker**.
  7. **Impaired property** means tangible property (other than **products** or **your work**):
    - a. whose value has been decreased:
      - 1) because it includes **products** or **your work** that is, or is believed to be, deficient or dangerous; or
      - 2) because **you** failed to carry out the terms of a contract; and
    - b. whose value can be restored:
      - 1) by the repair, replacement, adjustment, or removal of **products** or **your work**; or
      - 2) by **your** fulfilling the terms of the contract.
  8. **Insured** means:
    - a. **you** and **your** spouse, but only with respect to the conduct of a business on the **insured premises** of which **you** are the sole owner, if shown on the **declarations** as an individual;
    - b. **you** and all **your** partners or members and their spouses, but only with respect to the conduct of **your** business on the **insured premises**, if shown on the **declarations** as a partnership or a joint venture; or
    - c. **you** and all of **your** executive officers and directors, but only while acting within the scope of their duties in connection with **your** business conducted on the **insured premises** described on the **declarations**, if shown on the **declarations** as an organization (other than a partnership or joint venture). It also includes **your** stockholders, but only for their liability as such.

**Insured** also includes:

    - a. any person or organization, except **your employees**, while acting as **your** real estate manager;
    - b. if **you** die during the policy period, **your** legal representative while acting within the scope of those duties as such with respect to the **insured premises**, or a person who has custody of **your** property with respect to liability arising out of the maintenance or use of that property until **your** legal representative is appointed. **Your** legal representative has all **your** rights and duties under this coverage.
    - c. **your employees**, for acts within the scope of their employment by **you** (this does not include **your** executive officers). None of these **employees** are **insureds** for:
      - 1) **bodily injury** to **you** or to a fellow **employee**; or
      - 2) **property damage** to property owned by, rented to, or loaned to **employees**, or any of **your** partners or members and their spouses (if **you** are a joint venture or a partnership).
    - d. any organization (other than a joint venture or a partnership) newly acquired or formed by **you**, and in which **you** have a majority interest.

Such an organization is not an **insured**:

    - 1) if there is other similar insurance available to it;
    - 2) after 90 days immediately following that acquisition or formation or the end of the policy period, whichever is earlier; or
    - 3) for **bodily injury** or **property damage** that occurred prior to the acquisition or formation.
- No person or organization is an **insured** with respect to the conduct of a current or past partnership or joint venture that is not named on the **declarations** as an **insured**.

9. **Insured premises** means the location shown on the **declarations**, the grounds, and all adjoining access ways.
10. **Leased worker** means a person whom **you** lease from a labor leasing firm under a contract or agreement to perform duties related to the conduct of **your** business. **Leased worker** does not include a **temporary worker**.
11. **Limit** means the amount of coverage that applies.
12. **Loading or unloading** means the movement of property:
  - a. starting with after it is removed from the point where it has been accepted for transit by a **motorized vehicle**, an aircraft, or a watercraft;
  - b. continuing while it is in or on such vehicle; and
  - c. ending when it has been removed from the vehicle at its point of destination.

**Loading or unloading** includes movement by:

- a. a hand truck ; or
  - b. any mechanical device only when attached to the vehicle.
13. **Motorized vehicle** means a self-propelled land or amphibious vehicle regardless of method of surface contact. This includes parts and equipment.

This does not include vehicles that are designed and used to assist the handicapped and not required to be licensed for road use.

14. **Occurrence** means an accident and includes repeated exposure to similar conditions.
15. **Products/completed work hazard --**
  - a. **Products hazard** means **bodily injury** or **property damage** occurring away from the **insured premises** and arising out of **products** after physical possession of the **products** has been relinquished to others.
  - b. **Completed work hazard** means **bodily injury** or **property damage** occurring away from the **insured premises** and arising out of **your work**. It does not include work that has not been completed, or that has not been abandoned.

**Your work** is deemed completed at the earliest of the following times:

- 1) when all work specified in **your** contract has been done;
- 2) when all **your work** to be done at a job site has been completed if **your** contract includes work at more than one site; or
- 3) when **your work** at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same job site.

Work which requires further service, main-tenance, correction, repair, or replacement because of a defect or deficiency, but which is otherwise complete, shall be deemed completed.

- c. Neither of these hazards include **bodily injury** or **property damage** arising out of:
  - 1) the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle, created by **loading or unloading**;
  - 2) the presence of tools, uninstalled equipment, or abandoned or unused materials; or
  - 3) products or work for which the classification on the **declarations** specifies "including Products/Completed Work."

16. **Products** means goods or products manufactured, sold, handled, distributed, or disposed of by **you**, others trading under **your** name, or a person or organization whose business or assets **you** have acquired.

**Products** includes:

- a. warranties or representations made at any time with respect to the fitness, quality, durability, or performance of **products**;
- b. containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products; and
- c. providing or failing to provide warnings or instructions.

**Products** does not include:

- a. vending machines or other property that is rented to or placed for the use of others, but not sold; or
- b. real property.

17. **Property damage** means:
- physical injury or destruction of tangible property; or
  - the loss of use of tangible property whether or not it is physically damaged. Loss of use is deemed to occur at the time of the **occurrence** that caused it.
18. **Temporary worker** means a person who is furnished to **you** as a temporary substitute for an **employee**.
19. **Terms** are all provisions, limitations, exclusions, conditions, and definitions that apply to the Commercial Liability Coverage.
20. **Your work** means:
- work or operations performed by **you** or on **your** behalf;
  - materials, parts, and equipment supplied for such work or operations;
  - written warranties or representations made at any time regarding quality, fitness, durability, or performance of any of the foregoing; and
  - providing or failing to provide warnings or instructions.

## PRINCIPAL COVERAGES

**We** provide insurance for the following coverages indicated by a specific **limit** or premium charge on the **declarations**.

### COVERAGE L – BODILY INJURY LIABILITY PROPERTY DAMAGE LIABILITY

**We** pay all sums which an **insured** becomes legally obligated to pay as **damages** due to **bodily injury** or **property damage** to which this insurance applies. The **bodily injury** or **property damage** must be caused by an **occurrence** and arise out of the ownership, maintenance, or use of the **insured premises** or operations that are necessary or incidental to the **insured premises**.

This insurance applies only to **bodily injury** or **property damage** which occurs during the policy period.

### COVERAGE M – MEDICAL PAYMENTS

- We** pay the medical expenses defined below for **bodily injury** caused by an accident on the **insured premises**.
- We** pay such expenses regardless of fault, but only if:
  - they arise out of an accident that occurred during the policy period; and
  - they are incurred and reported within one year of the accident.
- Medical expenses means the reasonable and necessary expenses for:
  - medical, surgical, x-ray, and dental services, including prosthetic devices and eye glasses;
  - ambulance, hospital, professional nursing, and funeral services; and
  - first aid at the time of an accident.

### COVERAGE O – FIRE LEGAL LIABILITY

**We** pay for **property damage** to the **insured premises** which **you** rent from another, or which are loaned to **you**, if the **property damage** is caused by fire for which **you** are legally liable. Buildings include fixtures permanently attached thereto.

All of the exclusions otherwise applicable to **property damage** do not apply to this coverage. However, **we** do not cover:

- liability arising under any contract or agreement to indemnify any person or organization for damage by fire to the **insured premises**; or
- liability arising out of **property damage**:
  - which is expected by, directed by, or intended by the **insured**; or
  - that is the result of intentional and malicious acts of the **insured**.

## SUPPLEMENTAL COVERAGES

Subject to all the **terms** of the Principal Coverages, **we** provide the following incidental coverages. They do not increase the **limits** stated for the Principal Coverages.

## INCIDENTAL CONTRACTUAL LIABILITY

1. **We** cover **bodily injury** or **property damage** liability which is assumed under the following contracts or agreements:
  - a. lease of premises;
  - b. easement or license agreement (this does not include an agreement in connection with any construction or demolition operation within 50 feet of a railroad);
  - c. promise to indemnify a municipality if required by an ordinance (this does not apply in connection with work done for the municipality);
  - d. sidetrack agreement; or
  - e. elevator maintenance agreement.
2. This coverage does not apply to that part of any contract or agreement that indemnifies any person or organization for damage by fire to premises rented or loaned to **you**.

## INCIDENTAL VEHICLE COVERAGE

**We** pay for **bodily injury** or **property damage** arising out of:

1. the parking of a **motorized vehicle** on premises owned by, rented to, or controlled by **you** or on the ways immediately adjoining, if the **motorized vehicle** is not owned by or rented to or loaned to an **insured**;
2. a **motorized vehicle** while it is used to service the **insured premises** and not subject to motor vehicle registration; or
3. a watercraft that is on shore on premises owned by, rented to, or controlled by **you**.

## INCIDENTAL MEDICAL MALPRACTICE INJURY

1. **We** cover **bodily injury** arising out of the rendering or failure to render the following services:
  - a. medical, surgical, dental, x-ray, or nursing services or treatment, or the furnishing of food or beverages in connection therewith; or
  - b. the furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

2. This coverage does not apply to:
  - a. expenses incurred by an **insured** for first aid to others at the time of an accident;
  - b. an **insured** or an **employee** engaged in the business or occupation of providing any of the services described under 1.a. and 1.b. above; or
  - c. injury caused by an indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described in 1.a. and 1.b. above.

## DEFENSE COVERAGE

Payments under this coverage are in addition to the **limits** for the Commercial Liability Coverage.

1. **We** have the right and duty to defend a suit seeking **damages** which may be covered under the Commercial Liability Coverage. **We** may make investigations and settle claims or suits **we** decide are appropriate.

Suit includes any alternative dispute resolution proceeding involving **bodily injury** or **property damage** to which:

- a. **you** must submit; or
  - b. **you** submit with **our** consent.
2. **We** do not have to provide defense after **we** have paid an amount equal to the **limit** as the result of:
    - a. a judgment; or
    - b. a written settlement agreed to by **us**.
  3. If **we** defend a suit, **we** will pay:
    - a. The costs taxed to the **insured**.
    - b. The expenses incurred by **us**.
    - c. The actual loss of earnings by an **insured** for the time spent away from work at **our** request. **We** pay up to \$100 per day.
    - d. The necessary expenses incurred by an **insured** at **our** request.

- e. Pre-judgment interest awarded against any **insured** on that part of the judgment **we** pay. If **we** offer to pay the **limit**, **we** will not pay any pre-judgment interest based on that period of time after the offer.
- f. The interest which accrues beginning with entry of a judgment and ending when **we** tender, deposit in court, or pay up to **our limit**.
- g. The cost of appeal bonds or bonds for the release of attachments up to **our limit**. **We** are not required to apply for or furnish such bonds.

## EXCLUSIONS

**We** do not pay for a loss if one or more of the following excluded events apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded event.

### EXCLUSIONS THAT APPLY TO BODILY INJURY AND PROPERTY DAMAGE

1. **We** do not pay for **bodily injury** or **property damage**:
  - a. which is expected by, directed by, or intended by the **insured**; or
  - b. that is the result of intentional and malicious acts of the **insured**.

This exclusion does not apply to **bodily injury** that arises out of the use of reasonable force to protect people or property.

2. **We** do not pay for **bodily injury** or **property damage** liability which is assumed by the **insured** under a contract or an agreement.

This exclusion does not apply to:

- a. liability that an **insured** would have had in the absence of the contract or agreement; or
  - b. **bodily injury** or **property damage** covered under Incidental Contractual Liability Coverage, provided that the **bodily injury** or **property damage** occurs after the effective date of the contract or agreement.
3. **We** do not pay for **bodily injury** or **property damage** that arises out of the rendering or the

failure to render a professional service, except as covered under Incidental Medical Malpractice Injury Coverage.

4. **We** do not pay for **bodily injury** or **property damage** that arises out of the use of **motorized vehicles** in, or in the practice or preparation for, racing, speed, pulling or pushing, demolition, or stunt activities or contests.
5. **We** do not pay for **bodily injury** or **property damage** arising out of any premises other than the **insured premises**.
6. **We** do not pay for **bodily injury** or **property damage** that arises out of the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, **loading or unloading** of:
  - a. an aircraft;
  - b. a **motorized vehicle**; or
  - c. a watercraft,

except as covered under Incidental Vehicle Coverage.

7. **We** do not pay for **bodily injury** or **property damage** for which any **insured** may be held liable by reason of:
  - a. causing or contributing to the intoxication of a person;
  - b. the furnishing of alcoholic beverages to a person under the influence of alcohol or under the legal drinking age; or
  - c. a law or regulation relating to the sale, gift, distribution, or use of alcoholic beverages.

This exclusion applies if **you** are in the business of manufacturing, distributing, selling, or serving alcoholic beverages.

8. **We** do not pay for:
  - a. **bodily injury** to an **employee** of the **insured** if it occurs in the course of employment by the **insured**; or
  - b. consequential injury to a spouse, child, parent, brother, or sister of such injured **employee**.

This exclusion applies where the **insured** is liable either as an employer or in any other capacity; or there is an obligation to fully or partially reimburse a third person for **damages** arising out of paragraph 8.a. or 8.b. above.

This exclusion does not apply to liability assumed by the **insured** under a contract covered under Incidental Contractual Liability Coverage.

9. **We** do not pay for:

a. **bodily injury** or **property damage** arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants:

- 1) at or from the **insured premises** unless the **bodily injury** or **property damage** arises from the heat, smoke, or fumes of a fire which becomes uncontrollable or breaks out from where it was intended to be located;
- 2) at or from any premises, site, or location which is or was at any time used by or for any **insured** or others, for the handling, storage, disposal, or processing or treatment of waste; or
- 3) at or from any premises, site, or location where any **insured** or any contractor or subcontractor, directly or indirectly under **your** control, is working:
  - a) if the pollutant is brought on or to the premises, site, or location in connection with such work by such **insured**, unless the **bodily injury** or **property damage** arises from the heat, smoke, or fumes of a fire which becomes uncontrollable or breaks out from where it was intended to be located; or
  - b) if the work is to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of pollutants.

b. any loss, cost or expense arising out of any:

- 1) request, demand, or order that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of pollutants; or
- 2) claim or suit by or on behalf of any governmental authority relating to testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing or in any way responding to or

assessing the effects of pollutants.

Pollutants means:

- a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be disposed of as well as recycled, reclaimed, or reconditioned.
- b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.

10. **We** do not pay for **bodily injury** if benefits are provided or are required to be provided by the **insured** under a workers' compensation, disability benefits, occupational disease, unemployment compensation, or like law.

11. **We** do not pay for **bodily injury** or **property damage** that arises out of war. War includes undeclared war, civil war, insurrection, rebellion or revolution, or an act or a condition of war.

12. **We** do not pay for **bodily injury** that arises out of any:

- a. refusal to employ;
- b. termination of employment;
- c. coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct, or other employment-related practices, acts, or omissions; or
- d. consequential **bodily injury** as a result of 12.a., 12.b., and 12.c. above.

This exclusion applies where the **insured** is liable either as an employer or in any other capacity; or there is an obligation to fully or partially reimburse a third person for **damages** arising out of paragraph 12.a., 12.b., 12.c., or 12.d. above.

13. **We** do not pay for **bodily injury** or **property damage** included within the products/completed **work hazard**.

**ADDITIONAL EXCLUSIONS THAT APPLY ONLY TO PROPERTY DAMAGE**

1. **We** do not pay for **property damage** to property owned by, occupied by, or rented to **you**, except as covered under Coverage O.

2. **We** do not pay for **property damage** to premises **you** sell, give away, or abandon, if the **property damage** arises out of any part of those premises.
3. **We** do not pay for **property damage** to property used by or loaned to **you**. This exclusion does not apply with respect to liability assumed under a sidetrack agreement.
4. **We** do not pay for **property damage** to either business or non-business personal property in the care, custody, or control of the **insured**. This exclusion does not apply with respect to liability assumed under a sidetrack agreement.
5. **We** do not pay for **property damage** to **products** if the damage arises out of the **products** or their parts.
6. **We** do not pay for **property damage** to **your work** if the **property damage** arises out of **your work** and is included in the **products/completed work hazard**. This exclusion does not apply if damage to the work or the part of the work out of which the damage arises is performed by a subcontractor on **your** behalf.
7. **We** do not pay for **property damage** to property that has not been physically injured or destroyed, or to **impaired property**, that arises out of:
  - a. a delay or failure to perform a contract by **you** or one acting on **your** behalf; or
  - b. a defect, deficiency, inadequacy, or unsafe condition in **your work** or **products**.
- b. a tenant of an **insured**.
3. **We** do not pay for medical expenses for **bodily injury** to a person injured on that part of the premises that the person normally occupies.
4. **We** do not pay for medical expenses for **bodily injury** to a person while taking part in athletic activities.
5. **We** do not pay for medical expenses for **bodily injury** included in the **products/completed work hazard**.
6. **We** do not pay for medical expenses for **bodily injury** to **your** members if **you** are a club.
7. **We** do not pay for medical expenses for **bodily injury** to a guest of a hotel, motel, or tourist court owned or operated by **you** or on **your** behalf.
8. **We** do not pay for medical expenses for **bodily injury** to a person if benefits are provided or required to be provided under any workers' compensation, nonoccupational disability, occupational disease, or like law.
9. **We** do not pay for medical expenses for **bodily injury** to a:
  - a. student or camper enrolled in a program of any facility owned or operated by **you** or on **your** behalf; or
  - b. patient or inmate being treated or detained in a facility owned or operated by **you** or on **your** behalf.

This exclusion does not apply to the loss of use of other property resulting from sudden and accidental physical injury to or destruction of **your work** or **products** after having been put to its intended use.

#### **ADDITIONAL EXCLUSIONS THAT APPLY ONLY TO MEDICAL PAYMENTS**

These exclusions apply in addition to the other exclusions that apply to **bodily injury**.

1. **We** do not pay for medical expenses for **bodily injury** to an **insured**.
2. **We** do not pay for medical expenses for **bodily injury** to a person hired by or on behalf of any **insured** to do work for:
  - a. an **insured**; or

#### **WHAT MUST BE DONE IN CASE OF LOSS**

1. **Notice** --
  - a. In the case of an **occurrence**, or if an **insured** becomes aware of anything that indicates that there might be a claim under the Commercial Liability Coverage, **you** must arrange for prompt notice to be given to **us** or **our** agent. Notice to **our** agent is notice to **us**.
  - b. The notice to **us** must state:
    - 1) the **insured's** name;
    - 2) the policy number;
    - 3) the time, the place, and the circumstances of the **occurrence**, or the situation that indicates that there might be a claim; and

- 4) the names and addresses of all known and potential claimants and witnesses.
2. **Cooperation** -- All **insureds** involved with an **occurrence** or an offense must cooperate with **us** in performing all acts required by the Commercial Liability Coverage.
  3. **Volunteer Payments** -- An **insured** must not make payments or assume obligations or other costs except at the **insured's** own cost. This does not apply to first aid to others at the time of **bodily injury**.
  4. **Other Duties** --
    - a. If a claim is made or suit is brought, the **insured** must:
      - 1) promptly send to **us** copies of all legal papers, demands, and notices; and
      - 2) at **our** request assist in:
        - a) a settlement;
        - b) the conduct of suits. This includes the attendance at trials or hearings;
        - c) the enforcing of rights against all parties who may be liable to an **insured** for the injury or damage;
        - d) the securing of and giving of evidence; and
        - e) obtaining the attendance of all witnesses.
    - b. In the case of a medical payments loss:
      - 1) the injured person (or one acting on such person's behalf) must:
        - a) give **us** written proof of claim (under oath if requested) as soon as practicable; and
        - b) give **us** permission to get copies of the medical records; and
      - 2) the injured person must submit to medical exams by doctors chosen by **us** when and as often as **we** may reasonably require.

## HOW MUCH WE PAY

1. The **limits** shown on the **declarations** and subject to the following conditions, are the most **we** pay regardless of the number of:
  - a. **insureds** under the Commercial Liability Coverage;
  - b. persons or organizations who sustain injury or

damage; or

- c. claims made or suits brought.

The payment of a claim under Coverage M does not mean that **we** admit **we** are liable under other coverages.

2. The General Aggregate Limit is the most **we** will pay during a policy period for the sum of:
  - a. all **damages** under Coverages L and O; and
  - b. all medical expenses under Coverage M.
3. The Each Occurrence Limit, subject to the General Aggregate Limit, is the most **we** will pay for the total of:
  - a. **damages** under Coverages L and O; and
  - b. medical expenses under Coverage M,

due to all **bodily injury** and **property damage** arising out of a single **occurrence**.
4. Subject to the Each Occurrence Limit and the General Aggregate Limit, **our limit** for **property damage** covered under Coverage O is \$50,000 for each **occurrence** unless otherwise shown on the **declarations**.
5. Subject to the Each Occurrence Limit and the General Aggregate Limit, the Coverage M Limit is the most that **we** will pay under Coverage M for all medical expenses because of **bodily injury** sustained by any one person.
6. The General Aggregate Limit applies separately to each consecutive 12-month period beginning with the inception date of the Commercial Liability Coverage shown on the **declarations**. It also applies separately to any remaining policy period of less than 12 months, unless the Commercial Liability Coverage has been extended after it was written. In that case, the additional period will be considered part of the last preceding period for the purpose of determining **limits**.

## CONDITIONS

1. **Bankruptcy** -- Bankruptcy or insolvency of an **insured** does not relieve **us** of **our** obligations under Commercial Liability Coverage.

2. **Insurance Under More Than One Policy** -- (This does not apply to Coverage M -- Medical Payments.)

- a. Insurance under this Commercial Liability Coverage is primary except as provided under paragraph 2.c. below, or unless otherwise stated. The amount of **our** liability is not reduced because of other insurance which applies to the loss on other than a primary basis.
- b. If the other insurance is also primary, **we** will share in the loss as follows:

- 1) If the other insurance provides for contribution by equal shares, **we** will pay equal amounts with other insurers until:
- a) the lowest applicable **limit** under any one policy is reached; or
- b) the full amount of the loss is paid.

If part of the loss remains unpaid, **we** will pay an equal share with the other insurers until the full amount of the loss is paid, or until **we** have paid **our limit** in full.

- 2) If the other insurance does not provide for contribution by equal shares, **we** will pay, up to **our limit**, no more than that proportion of the loss to which the applicable **limit** under this policy for such loss bears to the total applicable **limit** for all insurance against the loss.

- c. Insurance under this Commercial Liability Coverage is excess over any other insurance:

- 1) if the other insurance, whether primary, excess, contingent, or on any other basis, provides fire insurance for premises rented to **you**; or
- 2) if the other insurance applies to any loss arising out of the maintenance or use of aircraft, **motorized vehicles**, or watercraft which may be covered by this Commercial Liability Coverage.

- d. When this insurance is excess over any other insurance:

- 1) **we** will have no duty to defend any claim or suit that any other insurer has a duty to defend. If no other insurer defends, **we** will do so. However, **we** will be entitled to the **insured's** rights against all those other insurers.

- 2) **we** will pay **our** share of the amount of loss, if any, that exceeds the sum of:

- a) the total amount that all such insurance would pay for the loss in the absence of this insurance; and
- b) the total of all deductibles and self-insured amounts required by such other insurance.

**We** will share the remaining loss with any other insurance that is not described in this excess insurance provision and was not bought specifically to apply in excess of the **limits** shown on the **declarations** of this Commercial Liability Coverage.

3. **Misrepresentation, Concealment or Fraud** -- This coverage is void as to **you** and any other **insured** if before or after a loss:

- a. **you** have or any **insured** has willfully concealed or misrepresented:

- 1) a material fact or circumstance that relates to this insurance or the subject thereof; or
- 2) the **insured's** interest herein;

- b. there has been fraud or false swearing by **you** or any other **insured** with regard to a matter that relates to this insurance or the subject thereof.

4. **Premium** -- If the premium is shown on the **declarations** as a deposit premium, **we** will compute the final earned premium at the end of each audit period shown on the **declarations**. If it is more than the deposit premium paid by **you**, **we** will bill **you** for the difference. If the final earned premium is less than the deposit premium paid by **you**, **we** will return the difference to **you**. **You** must maintain records of the information that is necessary for computing the premium. Copies of the records must be sent to **us** at the end of the audit period or when requested by **us**.

5. **Separate Insureds** -- Coverage provided under the Commercial Liability Coverage applies separately to each **insured** against whom claim is made or suit is brought. This does not affect the **limits** stated under How Much We Pay.

6. **Subrogation** -- If **we** pay under the Commercial Liability Coverage, **we** may require from an **insured** an assignment of any right of recovery. **We** are not liable under the Commercial Liability Coverage if

any **insured** has impaired **our** right to recover. An **insured** may waive the right to recover, in writing, before an **occurrence** takes place.

7. **Suit Against Us** -- No suit may be brought against **us** unless:

- a. all the **terms** of the Commercial Liability Coverage have been complied with; and
- b. the amount of the **insured's** liability has been determined by:
  - 1) a final judgment against an **insured** as a result of a trial; or
  - 2) a written agreement by the **insured**, the claimant and **us**.

No person has a right under the Commercial Liability Coverage to join **us** or implead **us** in actions that are brought to determine an **insured's** liability.

### **NUCLEAR ENERGY LIABILITY EXCLUSION**

This insurance does not apply:

1. under any liability coverage, to **bodily injury** or **property damage**:

- a. with respect to which an **insured** under the policy is also an **insured** under a Nuclear Energy Liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an **insured** under any such policy but for its termination upon exhaustion of its **limit** of liability; or

b. resulting from the **hazardous properties of nuclear material** and with respect to which:

- 1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereto; or
- 2) the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America or any agency thereof, with any person or organization.

2. Under any Medical Payments coverage, to expenses incurred with respect to **bodily injury** resulting from the **hazardous properties of nuclear material** and

arising out of the operation of a **nuclear facility** by any person or organization.

3. Under any liability coverage, to **bodily injury** or **property damage** resulting from the **hazardous properties of nuclear material**, if:

a. the **nuclear material**:

- 1) is at any **nuclear facility** owned by, or operated by, or on behalf of, an **insured**; or
- 2) has been discharged or dispersed therefrom;

b. the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, stored, processed, transported, or disposed of by or on behalf of an **insured**; or

c. the **bodily injury** or **property damage** arises out of the furnishing by an **insured** of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation, or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c.) applies only to **property damage** to such **nuclear facility** and any property thereat.

### **DEFINITIONS**

The following definitions apply to the Nuclear Energy Liability Exclusion:

1. **Hazardous Properties** -- These include radioactive, toxic, or explosive properties.

2. **Nuclear Material** -- This means **source material**, **special nuclear material**, or **by-product material**.

3. **Source Material, Special Nuclear Material, By-product Material** -- These have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.

4. **Spent Fuel** -- This means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.

5. **Waste** -- This means any **waste** material:

- a. containing **by-product material** other than the tailings or **wastes** produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content; and

b. resulting from the operation by any person or

organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**.

6. **Nuclear Facility** -- This means:

- a. any **nuclear reactor**.
- b. any equipment or device designed or used for:
  - 1) separating the isotopes of uranium or plutonium;
  - 2) processing or utilizing **spent fuel**; or
  - 3) handling, processing, or packaging **waste**.
- c. any equipment or device used for the processing, fabricating, or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium-223 or any combination thereof, or more than 250 grams of uranium-235; or

d. any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of **waste**;

and includes the site on which any of the foregoing is located, all operations conducted on such sites, and all premises used for such operations.

7. **Nuclear Reactor** -- This means any apparatus designed or used:

- a. to sustain nuclear fission in a self-supporting chain reaction; or
- b. to contain a critical mass of fissionable material.

8. **Property Damage** -- This includes all forms of radioactive contamination of property.