



AgriBusiness® Division**Agent Product Advisory**

Date: December 5, 2023

From: Dan Mersch, Product Management Team

To: Great American AgriBusiness® Agents

Subject: **Excess Policy for NEW YORK accounts**

We recently advised you that our *Commercial Excess Policy* **EXS 0001** (see attached) will be replacing our two umbrella products – the AgriGuard® *Farm Catastrophe Liability Coverage Form* and the Protector *Commercial Umbrella Coverage Form*. The Excess Policy is currently approved for New Business and Renewals in all states except California, where we are still awaiting Department of Insurance approval.

THE PURPOSE OF THIS ADVISORY is to inform you that we will be implementing the Excess Policy in the following state where you have insureds: **NEW YORK**.

- A. As your **March** accounts come up for renewal, we will mail an advance *Notice of Policy Conditional Renewal* to all your New York insureds who have expiring Umbrella coverage. This will begin the week of **December 11th**.
- B. These notices will be sent each month throughout 2023 and 2024 until all such New York insureds have been notified.
- C. You will receive a copy of every advance notice going out to these insureds.
- D. As a reminder, for any policy not written by Great American and scheduled on our Excess Policy, you must provide the underlying Dec Pages and Liability premiums for that policy.
- E. Our preference is to have the Excess Policy packaged with our APK, DPK, AGB, and APG policies. However, it can be written monoline on an EXC policy as needed. The Declarations Page for New York is **EXS 6010**. (See attached).

The following are the key differences of the Excess Policy that are described in the *Notice of Policy Conditional Renewal*:

1. **Reduction in Limit** – The expiring umbrella coverages contain a separate Products-Completed Operations Aggregate Limit of Insurance. The Excess Policy does not have a separate Products-Completed Operations Aggregate Limit of Insurance. Therefore, a claim involving products or completed operations will only reduce the General Aggregate Limit of Insurance shown in the Declarations and will not reduce a separate Products-C/O Aggregate Limit of Insurance. (See attached Declarations Page).
2. **Reduction in Coverage – New Exclusions** – The expiring umbrella coverages or underlying insurance may not contain the following exclusions shown on the Excess Policy. The presence of these exclusions in the Excess Policy could be viewed as a reduction in coverage:
 - Antitrust, Restraint of Trade, Unfair Competition or Similar Law or Regulation
 - Assault or Battery
 - Cyber Incident
 - Engineers, Architects or Surveyors Professional Liability
 - Failure to Supply
 - Perfluoroalkyl or Polyfluoroalkyl Substances (PFAS)
 - Violation of Law Addressing Data Privacy
3. **Abuse or Molestation – Revised Exclusion** – This exclusion in the Excess Policy is more restrictive than that contained in the expiring umbrella coverages or underlying insurance: Abuse will include any actual, threatened, or alleged act, error, omission, conduct, or misconduct, that a claim or suit alleges to be, or to constitute, any form of abuse under any applicable state or federal statute or regulation; and will include sexual behavior, sexual conduct or misconduct, sexual assault, sexual battery, sexual abuse, or sexual molestation, as well as non-sexual assault, non-sexual battery, or non-sexual abuse.
4. **Pollution – Revised Exclusion** – The Excess Policy contains a total pollution exclusion which is more restrictive than the pollution exclusion in the expiring umbrella coverages or underlying insurance. The *New York – Amendment of Pollution Exclusion EXS 1206* can attach to provide some coverage exceptions.
5. **Following Form Coverage** – Most of our expiring umbrella policies and coverages already contain *following form* language or endorsements – so essentially our Umbrella product has historically functioned more like an Excess product than a true Umbrella. To paraphrase the Insuring Agreement of the EXS 0001 ... *Subject to the terms, conditions, definitions and exclusions of the Excess Policy, the coverage provided by the Excess Policy will follow the scheduled underlying insurance. In no event will the Excess Policy provide broader coverage in any respect than is provided in any underlying insurance.*

If an exposure is excluded in the Underlying, then it is excluded in the Excess Policy – the Underlying exclusion will follow into the Excess. But if an exposure is covered in the Underlying, then it is only *possibly* covered in the Excess Policy. Why “possibly covered”? Because as the Insuring Agreement states, coverage provided by the Excess Policy is subject to all the exclusions of the Excess Policy.

For example, the following exposures shown below may have coverage (even if just limited coverage) provided by the Underlying forms shown on the Left, but no coverage in the Excess Policy because of the exclusions shown on the Right:

Exposure	Underlying Coverage Form	Excess Policy Exclusion
Abuse or Molestation	CG 8765	EXS 2105
Aircraft Spraying Crop Dusting	AL7435	UMX 2006
Animal Waste	AL7665	UMX 8004
Chemical Drift	AL7403, AL7450	UMX 2019
Equine CCC	CM 7734	EXS 2013
Equine Professional Services	AL7623	UMX 8002
Fungi Spores or Mold	N/A	N/A
*Liquor	CG 0033	*EXS 2052
Product Recall	AL 7527	EXS 2064
Security Breach	N/A	EXS 2001, UMX2116
Seedmen's E&O	AL7449	UMX 2040

** Except for Liquor Liability, all the above Excess Policy exclusions will automatically attach to the Excess Policy.*

FOLLOWING ARE EXPLANATIONS OF SOME KEY EXCESS POLICY FORMS:

Pollution – Exclusion **C. Pollution** contained in the **EXS 0001** is a total pollution exclusion which eliminates any underlying Pollution coverage from going into the Excess. However, as stated in item **4.** on Page 2 above, endorsement **EXS 1206** attaches to provide some coverage exceptions. Also, to clarify that the pollutant “waste” includes animal waste, the mandatory *Natural Fertilizer and Animal Waste Exclusion* **UMX 8004** is utilized to specifically exclude this exposure.

Other Mandatory Exclusions – In addition to UMX 8004 other exclusions which can never be removed from the Excess Policy are:

- *Engineers, Architects or Surveyors Professional* **UMX 2056**
- *New York – Corporal Punishment* **UMX 1174**
- *New York – Punitive or Exemplary Damages* **UMX 1164**
- *Perflouroalkyl Polyflouroalkyl Substances (PFAS)* **EXS 2103**

Automatically Attached Exclusions – The following exclusions are attached to all Excess Policies to prevent underlying coverage from going into the Excess:

- *Abuse or Molestation* **EXS 2105** – This is more restrictive than the expiring exclusion, as previously mentioned on page 2 of this Advisory.
- *Access or Disclosure of Confidential or Personal Information* **EXS 2001**
- *Aircraft Dusting or Spraying* **UMX 2006**
- *Antitrust, Restraint of Trade, Unfair Competition or Similar Law* **UMX 2008**
- *Care, Custody or Control – Real or Personal Property* **EXS 2013** – This excludes coverage for all CCC exposures including any possible Equine CCC coverage.
- *Chemical Drift Liability* **UMX 2019**
- *Cyber Incident* **UMX 2116**
- *Equine Professional Damages* **UMX 8002** – This will appear on all accounts, with or without equine exposure.
- *Failure to Supply* **UMX 2041**
- *Product Recall* **EXS 2064**
- *Seedmen’s Errors and Omissions* **UMX 2040**
- *Violation of Law Addressing Data Privacy* **UMX 2117**

Uninsured/Underinsured Motorist – The *New York UM-UIM Exclusion* **EXS 1196** will also automatically attach to all Excess Policies. It can only be removed if Excess UM-UIM Coverage is required and/or requested for vehicles licensed or principally garaged in the five states of FL, LA, NH, WV, and VT. In states where Excess UM/UIM is required to be offered, the *New York Excess Supplementary UM-UIM Coverage* **EXS 1187** will attach with a \$1,000,000 Limit of Insurance shown in the Schedule. NOTE: If an underlying Auto policy

does cover a known vehicle(s) in the states of LA, NH, WV, or VT, and Excess UM-UIM Coverage is not rejected, then the Excess Policy limit cannot exceed \$1,000,000.

Liquor Liability – The *Liquor Liability Exclusion* **EXS 2052** eliminates all liability associated with liquor including host liquor liability. This exclusion will be attached if the underlying policy contains the *Liquor Liability Coverage Form* CG 0033, and it will prevent that coverage from going into the Excess. Without this exclusion being added, the standard Liquor Liability exclusion which is built into the underlying AL 7403 or CG 0001 will follow into the Excess.

Automobile Liability – If no underlying Auto policy is scheduled on the Excess Policy, then the *Automobile Liability Exclusion* **EXS 2010** will attach in order to remove any liability associated with any auto.

Terrorism for Farm & Ranch accounts (not subject to TRIA) – Any underlying Terrorism exclusion or underlying Terrorism coverage will simply follow into the Excess Policy. There are no Excess forms to select.

Terrorism for Commercial accounts (subject to TRIA) – We provide coverage for Certified Acts of Terrorism on non-hazardous accounts at no premium charge. *New York TRIA Disclosure* form **UMX 1161** will attach to policies that have underlying TRIA coverage. Additional UMX forms will then automatically attach.

Professional Liability Exclusions – The underlying Professional exclusions of the *Farm Liability Coverage Form* or the *CGL Coverage Form* will follow into the Excess.

Designated Exclusions – Any Underlying exclusion will follow into the Excess. Underwriting will only select the *New York Designated Exclusion* **UMX 1185** if an exposure (other than Professional) is covered in the Underlying and we want to exclude that exposure from the Excess layers (and a specific exclusion like those on Page 3 of this Advisory does not already exist). Underwriting then chooses the appropriate category and describes the exposure being excluded on the UMX 1185.

Variable Endorsements – Any Underlying variable form will follow into the Excess.

Notice to Policyholders – The policy stuffer *Notice to Policyholders* **SDM-1201** will contain information similar to that of the advance notice to your insureds, and it will automatically attach upon renewal.

If you have any questions regarding this Product Advisory, please contact your AgriBusiness® Division Underwriter.