

COMMERCIAL EXCESS POLICY

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Policy. The words "we", "us" and "our" refer to the company providing this insurance.

Words and phrases that appear in quotation marks have special meaning. Refer to **SECTION VI - DEFINITIONS**.

SECTION I - INSURING AGREEMENT

Except for the terms, conditions, definitions and exclusions of this Policy, the coverage provided by this Policy will follow the "controlling underlying insurance".

We will pay on behalf of the insured "loss" in excess of the "underlying limits of insurance" subject to **SECTION II - LIMITS OF INSURANCE**.

In no event will this Policy provide broader coverage in any respect than is provided in any "underlying insurance".

If any "underlying insurance" affords coverage for any "loss" that is subject to a limit that is less than the full amount of the "underlying limits of insurance" coverage under this Policy does not apply.

SECTION II - LIMITS OF INSURANCE

A. The Limits of Insurance shown in the Declarations and the rules below describe the most we will pay regardless the number of:

1. insureds;
2. claims made or suits brought; or
3. persons or organizations making claims or bringing suits.

B. The Limits of Insurance of this Policy will apply as follows:

1. This Policy applies only in excess of the "underlying limits of insurance" shown in the Schedule of Underlying Insurance.
2. The Aggregate Limit shown in the Declarations is the most we will pay for all "loss" that is subject to an aggregate limit provided by the "controlling underlying insurance". The Aggregate Limit will apply separately and in the same manner as the aggregate limit in such "controlling underlying insurance", provided that all "underlying insurance" applies their aggregate limit in the same manner as the "controlling underlying insurance", but only up to the amount shown in the Declarations of this Policy.
3. The Each Occurrence limit stated in the Declarations is the most we will pay for all "loss" arising out of any one occurrence to which this Policy applies.

4. "Underlying limits of insurance" will only be reduced or exhausted by actual payment of "loss" by the underlying insurers the full amount of "underlying limits of insurance" for judgments or settlements for "loss" to which this Policy applies. When the "underlying limits of insurance" are reduced or exhausted, the insurance provided by this Policy will apply in excess of the reduced or exhausted "underlying limits of insurance".

However, we will not pay that portion of a "loss" that is within the "underlying limits of insurance" which the Insured has agreed to fund by self-insurance or means other than insurance.

- C. The Limits of Insurance of this Policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION III - DEFENSE AND SUPPLEMENTARY PAYMENTS

- A. We will have the right to be associated with you or your underlying insurer or both in the investigation of any claim or defense of any suit which in our opinion may create liability for us for "loss" under this Policy. If we exercise such right, we will do so at our own expense and we will have the right to withdraw at any time.
- B. If all "underlying limits of insurance" stated in the Schedule of Underlying Insurance are exhausted by payment of "loss", we shall have the right, but not the duty, to investigate any claim or assume the defense of any suit which in our opinion may give rise to a "loss" under this Policy. If we exercise such right, we will do so at our own expense and we will have the right to withdraw at any time.

SECTION IV - EXCLUSIONS

This insurance does not apply to:

A. Asbestos

Any liability including, but not limited to settlements, judgments, costs, charges, expenses, costs of investigations, or the fees of attorneys, experts, or consultants arising out of or related in any way, either directly or indirectly, to:

1. asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust, including, but not limited to, manufacture, mining, use, sale, installation, removal, or distribution activities, and including, but not limited to, any disturbance, upset or unsettling of asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust;
2. exposure to testing for, monitoring of, cleaning up, removing, containing or treating of asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust; or
3. any obligation to investigate, settle or defend, or indemnify any person against any request, demand, claim or suit arising out of or related in any way, either directly or indirectly, to asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust.

B. Nuclear Energy Liability

Any liability:

1. with respect to which any insured under this Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability 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 insurance; or
2. resulting from the "hazardous properties" of "nuclear material" and with respect to which:
 - a. a person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - b. any 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.

Any injury or "nuclear property damage" resulting from the "hazardous properties" of "nuclear material", if:

1. the "nuclear material":
 - a. is at any "nuclear facility" owned by, or operated by or on behalf of, any insured; or
 - b. has been discharged or dispersed therefrom;
2. the "nuclear material" is contained in "spent fuel" or "nuclear waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any insured; or
3. the injury or "nuclear 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 **B.3.** applies only to "nuclear property damage" to such "nuclear facility" and any property therein.

As used in this exclusion:

1. "Hazardous properties" include radioactive, toxic or explosive properties.
2. "Nuclear facility" 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 "nuclear 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 any insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- d. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "nuclear waste";

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

- 3. "Nuclear material" means "source material", "special nuclear material" or "by-product material".
- 4. "Nuclear property damage" includes all forms of radioactive contamination of property.
- 5. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- 6. "Nuclear waste" means any waste material:
 - a. containing "by-product material" other than the tailings of "nuclear 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 within the definition of "nuclear facility" under Paragraphs **a.** and **b.** in the definition of "nuclear facility".
- 7. "Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- 8. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

C. Pollution

Any liability including, but not limited to settlements, judgments, costs, charges, expenses, costs of investigations, or the fees of attorneys, experts, or consultants arising out of or in any way related, either directly or indirectly, to:

- 1. the actual, alleged or threatened presence, discharge, dispersal, seepage, migration, release, escape of, or exposure to "pollutants", however caused;
- 2. any request, demand, or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effects of "pollutants". This includes demands, directives, complaints, suits, orders or requests brought by any governmental entity or by any person or group of persons;
- 3. steps taken or amounts incurred by a governmental unit or any other person or organization to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize or assess the effects of "pollutants".

This exclusion will apply to any liability, costs, charges or expenses, or any judgments or settlements, arising directly or indirectly out of pollution whether or not the pollution was sudden, accidental, gradual, intended, expected, unexpected, preventable or not preventable.

As used in this exclusion "pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

SECTION V - CONDITIONS

A. Appeals

In the event you or any underlying insurer elects not to appeal a judgment in excess of the amount of the "underlying insurance", we may elect to appeal at our expense. If we elect to do so, we will be liable for the costs and additional interest accruing during this appeal. Those sums will be in addition to the Limit of Insurance. In no event will our liability exceed the applicable Limit of Insurance.

B. Bankruptcy or Insolvency

The bankruptcy, insolvency or inability to pay of any insured or of the insured's estate, or the bankruptcy, insolvency or inability of any of the underlying insurers to pay, will not relieve us from our obligation to pay "loss" covered by this Policy.

In the event of such bankruptcy, insolvency or refusal or inability to pay, the insurance afforded by this Policy will not replace such "underlying insurance", but will apply as if the "underlying insurance" was fully available and collectible.

C. Cancellation

1. The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium;
or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this Policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. However, final premium will not be less than the Minimum Premium as shown in the Declarations. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

In the event that any of the above provisions conflict with any law or regulation that controls or governs the cancellation of this Policy, then such law or regulation shall prevail and this Policy is amended to conform to such law or regulation.

D. Changes

This Policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this Policy with our consent. This Policy's terms can be amended or waived only by written endorsement issued by us and made part of this Policy. Notice to any agent or knowledge possessed by any agent or any other person will not waive or a change any part of this Policy.

E. First Named Insured Duties

The person or organization first named in the Declarations is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for the giving and receiving of notice of cancellation or the receipt of any return premium that may become payable. We will be furnished a complete copy of the "controlling underlying insurance" described in the Schedule of Underlying Insurance and any subsequently issued endorsements which may in any way affect this insurance.

F. Legal Actions Against Us

No person or organization has a right under this Policy:

1. to join us as a party or otherwise bring us into a suit asking for damages from an insured; or
2. to sue us on this Policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

G. Maintenance of Underlying Insurance

During the period of this Policy, you agree:

1. to keep the "underlying insurance" in full force and effect; and
2. that the "underlying limits of insurance" will be maintained except for any reduction or exhaustion by payment of claims or suits covered by "underlying insurance".

If you fail to comply with these requirements, we will only be liable to the same extent that we would have been had you fully complied with these requirements.

H. Nonrenewal

If we decide not to renew this Policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

In the event that provisions of this condition conflict with any law or regulation that controls or governs the cancellation of this Policy, then such law or regulation shall prevail and this Policy is amended to conform to such law or regulation.

I. Notice of Occurrence

1. You must see to it that we are notified as soon as practicable of an occurrence which may result in a "loss" covered under this Policy. To the extent possible, notice will include:
 - a. how, when and where the occurrence took place;
 - b. the names and addresses of any injured persons and witnesses;
 - c. the nature and location of any injury or damage arising out of the occurrence.
2. If a claim or suit against any insured is reasonably likely to involve this Policy, you must notify us in writing as soon as practicable.
3. You and any other involved insured must:
 - a. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
 - b. authorize us to obtain records and other information;
 - c. cooperate with us in the investigation, settlement or defense of the claim or suit; and
 - d. assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
4. The insureds will not, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

J. Other Insurance

If other valid and collectible insurance applies to a "loss" that is also covered by this Policy, this Policy will only apply in excess of the applicable limits of that other insurance. Nothing in this provision will be construed to make this Policy subject to the terms, conditions and limitations of such other insurance. However, this provision will not apply if the other insurance is specifically written to apply only in excess of the applicable Limits of Liability of this Policy. Other insurance includes any type of self-insurance or other mechanism by which an insured arranges for funding of legal liabilities.

K. Premium

Unless otherwise provided, the premium for this Policy is a flat premium and is not subject to adjustment except as provided herein or amended by endorsement. If any additional premium charge is made to the "underlying insurance" during the policy period or if there is an increase in the risk assumed by us, our premium may be adjusted accordingly.

L. Terms Conform to Statute

In the event that provisions of this Policy conflict with any law or regulation that controls or governs this Policy, then such law or regulation shall prevail and this Policy is amended to conform to such law or regulation.

M. Titles and Headings

Headings and titles contained in this Policy are for purposes of organization and reference only. They do not, and shall not be deemed to, control or affect the meaning or construction of any provision of this Policy.

N. When Loss is Payable

Coverage under this Policy will not apply unless and until the insured or the insured's "underlying insurance" has paid or is obligated to pay the full amount of the "underlying limits of insurance" stated the Schedule of Underlying Insurance.

When the amount of "loss" has finally been determined, we will pay as soon as practicable on behalf of the insured the amount of "loss" covered under the terms of this Policy.

O. When We Are Prohibited From Paying Damages On Behalf Of An Insured

If we are prevented by laws, statutes or regulations of a country or jurisdiction from paying for "loss" on behalf of the insured, then where permitted by the laws, statutes or regulations of such country or jurisdiction, we will indemnify the insured for those sums in excess of the "underlying limits of insurance".

SECTION VI - DEFINITIONS

A. Controlling Underlying Insurance

"Controlling underlying insurance" means the policy or policies of insurance stated as such in the Schedule of Underlying Insurance.

B. Loss

"Loss" means those sums which an insured is legally obligated to pay as damages, after making proper deductions for all recoveries and salvage.

C. Underlying Insurance

"Underlying insurance" means "controlling underlying insurance" and all policies of insurance listed in the Schedule of Underlying Insurance.

D. Underlying Limits of Insurance

"Underlying limits of insurance" means the total sum of the limits of all applicable "underlying insurance" stated in the Schedule of Underlying Insurance, including self-insurance, or means other than insurance.