

EXCESS AUTO LIABILITY COVERAGE FORM

AND EXCESS GENERAL LIABILITY COVERAGE FORM.

PREAMBLE

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. The word “insured” means any person or organization qualifying as such under [Section II – Who Is an Insured](#).

Other words and phrases that appear in quotation marks have special meaning. Refer to [Section V - Definitions](#).

I. SECTION I. COVERAGE

A. EXCESS LIABILITY – INSURING AGREEMENT

1. This insurance applies only to injury or damage covered by “underlying insurance”. The definitions, terms, conditions, limitations, exclusions and warranties of the “underlying insurance” in effect at the inception of this policy apply to this coverage unless they:
 - a. Conflict with the provisions of this insurance; or
 - b. Relate to any of the following: premium; our right to recover payment; “other insurance”; any duty to investigate or defend; the amount or limits of insurance; the payment of expenses; cancellation; or any renewal agreement.
2. We will pay on behalf of any insured those sums in excess of “underlying insurance” or “other insurance” that any insured becomes legally obligated to pay as damages to which this insurance applies. If “underlying insurance” does not pay any claim or “suit” for any reason other than exhaustion of their limits of insurance, we will not pay such claim or “suit”.
 - a. This insurance applies only to “Occurrences” which take place during this policy period.
3. The amount we will pay for damages is limited in SECTION III. LIMITS OF INSURANCE.

B. EXCLUSIONS

This insurance does not apply to:

1. Asbestos or Silica
 - a. Any liability arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of asbestos or “silica” or “silica-related dust”.
 - b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of or in any way responding to or assessing the effects of asbestos, “silica” or “silica-related dust” by any insured or by any other person or entity.
2. E.R.I.S.A.

Any obligation of any insured under the Employee Retirement Income Security Act (E.R.I.S.A.) of 1974, and any amendments thereto or any similar federal state or local statute.

3. First Party "Auto" Coverage

Any loss, cost or expense payable under or resulting from any first party physical damage coverage; no-fault law; personal injury protection or auto medical payments coverage; or uninsured or underinsured motorist law; or inland marine / motor truck cargo coverage; or trailer interchange coverage.

4. Medical Expense Payments

Medical expenses or medical payments, as described in "underlying insurance".

5. Pollution

a. Any liability arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

b. "Pollution cost or expense".

This exclusion does not apply if valid "underlying insurance" for the Pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits. Coverage provided will follow the provisions, exclusions and limitations of the "underlying insurance".

6. Property Damage

a. Any liability arising out of damage to or loss of use of:

i. Real or personal property any insured owns, rents or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

ii. Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

iii. Real or personal property loaned to any insured;

iv. Personal property in the care, custody or control of any insured; or

v. That particular part of any real property on which any insured or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the damage arises out of those operations.

b. Section a.(1) of this exclusion does not apply to damage to real property rented to you arising out of fire, explosion, lightning or sprinkler leakage which occurs during the first thirty (30) days after the date such real property was rented to you.

c. Sections a.(3), (4) and (5) of this exclusion do not apply to liability assumed under a sidetrack agreement.

7. Workers' Compensation And Similar Laws

Any obligation for which any insured may be held liable under any of the following: workers' compensation laws; unemployment compensation laws; disability benefits laws; or any similar laws.

8. War

Injury or damage, however caused, arising, directly or indirectly, out of:

a. War, including undeclared or civil war;

- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

9. TERRORISM PUNITIVE DAMAGES

Damages arising, directly or indirectly, out of a "certified act of terrorism" that are awarded as punitive damages.

10. TERRORISM

"Any injury or damage" arising, directly or indirectly, out of an "other act of terrorism". However, this exclusion applies only when one or more of the following are attributed to such act:

- a. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
- b. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or
 - b. Protracted and obvious physical disfigurement; or
 - c. Protracted loss of or impairment of the function of a bodily member or organ; or
- c. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
- d. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- e. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs 1. and 2. describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

11. MCS-90 FORM

Insurance provided under this form does not apply to actual or alleged "injury or damage", or any "ultimate net loss", costs or expenses of any kind, allegedly resulting therefrom, based upon, arising out of, directly or indirectly, in whole or in part, or in any way involving any insured, US, or any insurer providing Controlling Underlying Insurance, the terms of "Endorsement for Motor Carrier Policies of Insurance for Public Liability" under Section 29 and 30 of the Motor Carrier Act of 1980 or the terms of any similar endorsement required by Federal or State statutes.

This Policy shall not recognize reduction or exhaustion of the Controlling Underlying Insurance by any claim for or suit for or payment of "ultimate net loss", cost or expenses excluded by this Endorsement.



12. ANY OTHER EXCLUSION listed on the “underlying insurance” policy form or on the policy declarations page.
13. All Exclusions listed on Form NH100, Form NH200 and Form NH400.

SECTION II. WHO IS AN INSURED

The following persons and organizations are insureds under this insurance.

1. Newly Acquired Or Formed Organizations

This insurance will follow the provisions of the “underlying insurance” with respect to any organization you newly acquire or form other than a partnership, joint venture or limited liability company.

2. Partnerships and Joint Ventures

No person or organization is an insured with respect to the conduct of any current, past or newly acquired or formed partnership, joint venture or limited liability company that is not shown as a named insured in the Declarations.

3. Persons or Organizations Insured in “underlying insurance”

Any person or organization who is an insured in “underlying insurance” at the inception of this policy is an insured.

4. Named Insureds

Any person or organization shown in the named insured section of the Declarations of this policy is an insured.

5. Additional Insureds

At your option, any person or organization who is added as an additional insured in “underlying insurance” after the inception of this policy is an insured, but only:

- a. When you agree prior to the time of an “occurrence” to provide such insurance as is afforded by this insurance; and
- b. With respect to liability arising out of:
 - i. “your work” or “your products”; or
 - ii. Property owned or used by you.

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured, subject to this policy limit, is the amount of insurance required by the contract or agreement, less any amounts payable by any “underlying insurance” or “other insurance”.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the “underlying insurance”.

SECTION III. LIMITS OF INSURANCE

A. “Occurrence” Limit

Subject to the Aggregate limit, the Limit of Insurance stated in the Declarations as “each occurrence” is the most we will pay for all damages under this insurance, arising out of any one “occurrence” regardless of the number of:

1. Persons or organizations who are insureds under this insurance;
2. Persons or organizations sustaining injury or damage; or
3. Claims made or “suits” brought.

B. Aggregate Limit

1. The Aggregate Limit of Insurance stated in the Declarations of this insurance is the most we will pay for all injuries or damages. The Aggregate limit of this insurance applies on the same basis as the Aggregate limit of "underlying insurance".
2. Policy Period Extensions - If, after this policy is issued, we extend the policy period, we will consider the additional period as part of the original policy period to determine how to apply the aggregate limit.
3. This insurance applies only in excess of the total available limits of "underlying insurance" and "other insurance" combined. But if "underlying insurance" or "other insurance" has a limit of insurance:
 - a. Greater than the amount shown in the schedule of "underlying insurance", this insurance applies excess of the greater amount; or
 - b. Less than the amount shown in the schedule of "underlying insurance", this insurance applies excess of the amount shown in the schedule.
4. If the limit of insurance of "underlying insurance" applies on an aggregate basis, and;
 - a. When such limit has been exhausted by payment of "suits", claims or claims expense arising solely out of "occurrences" which took place during this policy period, this insurance applies excess of such exhausted limit; or
 - b. When such limit has been reduced, or exhausted by payment of "suits", claims or claims expense arising out of "occurrences" which took place before or after this policy period, this insurance applies as if such payments had not been made.

C. Non-Concurrence of Policy Periods – Retained Limit

If there is "underlying insurance" with a policy period that is non-concurrent with the policy period of this Excess Auto Liability Coverage Form, the "retained limit(s)" will only be reduced or exhausted by payments for:

- a. "Bodily injury" or "property damage" which occurs during the policy period of this Coverage Part; or
- b. "Personal and advertising injury" for offenses that are committed during the policy period of this Coverage Part.

D. Controlling Underlying Insurance

If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.

SECTION IV. CONDITIONS

The following conditions apply. In addition, the conditions applicable to any "controlling underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

1. Appeals

If any "underlying insurer" or insured elects not to appeal a judgment in excess of the "underlying insurance" we may do so at our own expense. We will be liable for taxable costs, pre- and post-judgment interest and disbursements. Such payments will not reduce the Limits of Insurance.

2. Bankruptcy

a. Bankruptcy of Insured

Bankruptcy or insolvency of the insured or the insured's estate does not relieve us of our duties.

b. Bankruptcy of Underlying Insurer

If any "underlying insurer" becomes bankrupt or insolvent, this insurance:

- (1) Does not replace such "underlying insurance"; and
- (2) Applies as though such "underlying insurance" was available and collectible.

3. Duties In The Event of "Occurrence", Claim or "Suit"

a. You must see to it that we are notified as soon as practicable of an "occurrence" regardless of the amount which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence took place;
- (2) The names and addresses of any injured persons and witnesses;
- (3) The nature and location of any injury or damage arising out of the "occurrence"; and
- (4) All information available to identify this policy, including the name of any "insured.

b. If a claim is made or "suit" is brought against any insured you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

c. You and any other involved insured or their representative must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit";
- (4) 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;
- (5) Take all necessary steps to protect any insured's and our interests;
- (6) Cooperate with "underlying insurers", as required by their terms and conditions;
- (7) Not at any time make or authorize an admission of liability or attempt to settle or otherwise dispose of any claim or "suit" without our written consent;
- (8) If any "underlying insurer" denies coverage for any reason, see to it that we receive written notice of such denial as soon as practicable. Such notice shall contain the reason for such denial as stated by the "underlying insurer".

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

4. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this Coverage Part 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 the Coverage Part 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.

5. Other Insurance

- a. This insurance is excess over, and shall not contribute with any "other insurance", whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this insurance.
When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- b. When this insurance is excess over "other insurance", we will pay only our share of the loss that exceeds the sum of:
 - (1) The total amount that all such "other insurance" would pay for the loss in the absence of this insurance; and
 - (2) The total of all deductible and self-insured amounts under all that "other insurance".

6. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first named insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for this policy period is greater than the earned premium, we will return the excess to the first named insured.
- c. The first named insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

7. Representations or Fraud

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We have issued this policy in reliance upon your representations; and
- d. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

8. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first named insured, this insurance applies:

- a. As if each named insured were the only named insured; and

- b. Separately to each insured against whom claim is made or “suit” is brought.

9. Transfer of Rights of Recovery Against Others to Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring “suit” or transfer those rights to us and help us enforce them.

Any recoveries shall be distributed as follows:

- a. First, we shall be entitled to recover to the extent of our payment; and
- b. Next, any remaining amounts shall be paid to the “underlying insurers” or any other party to the extent of their payment.

The expenses of the recovery will be distributed in proportion to the share of each party’s recovery. But, if we conduct the recovery proceedings by ourselves:

- a. We will pay all expenses; and
- b. If we make a recovery, we will be reimbursed in full from the recovery for our expenses before the recovery is distributed.

10. When We Do Not Renew

If we decide not to renew this Coverage Part, 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.

11. Loss Payable

- a. Liability under this Coverage Part shall not apply unless and until the insured or insured’s “underlying insurer” has become obligated to pay the “underlying insurance” limit. Such obligation by the insured to pay part of the loss shall have been previously determined by a final settlement or judgment after an actual trial or written agreement between the insured, claimant, and us.
- b. Nothing contained in this policy gives any person or organization any right to join us as a co-defendant in any action against any insured to determine that insured’s liability.

12. Maintenance of “Underlying Insurance”

- a. You will maintain all of the “underlying insurance” listed in the schedule of “underlying insurance” in the declarations in full force and effect throughout this policy period, except for reduction of aggregate limits due to payment of claims, settlements or judgments.
- b. Failure to maintain “underlying insurance” will not invalidate this insurance. However, this insurance will apply as if the “underlying insurance” were in full effect.
- c. If there is any increase in coverage, other than an increase in Limits of Insurance, of any “underlying insurance” after that “underlying insurance” has been issued, this insurance will apply as if the “underlying insurance” had not been changed.
- d. You will notify us as soon as practicable when any “underlying insurance” is no longer in effect.

13. Endorsements to This Coverage Part

Reference to Excess Auto Liability Form in any endorsement that is attached to or made a part of this Coverage Part shall mean this Coverage Part.

SECTION V. DEFINITIONS

A. Definitions Used in the “Underlying Insurance”:

The definitions contained in the “underlying insurance” apply to this insurance. When there is no definition in the “underlying insurance”, the following definitions apply:

1. “Auto” means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. However, “auto” does not include “mobile equipment”.
2. “Mobile Equipment”

The meaning of the term “mobile equipment” contained in “underlying insurance” applies to this insurance.
3. “Pollutants” mean 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.
4. “Property damage” means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

5. “Suit” means a civil proceeding in which damages to which this insurance applies are alleged. The term includes:
 - a. An arbitration proceeding in which such damages are claimed and to which any insured must submit or does submit with our consent; and
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which any insured submits with our consent.
6. “Your product” means:
 - a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or
 - (3) A person or organization whose business or assets you have acquired; and
 - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

“Your product” includes:

- (1) Warranties or representations made at any time as respects the fitness, quality, durability, performance or use of “your product”; and
- (2) The providing of or failure to provide warnings or instructions.

“Your product” does not include vending machines or any other property rented to or located for the use of others but not sold.

7. “Your work” means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

“Your work” includes:

- (1) Warranties or representations made at any time as respects the fitness, quality, durability, performance or use of “your work”; and
- (2) The providing of or failure to provide warnings or instruction.

B. Definitions Used In this Coverage Part:

The following definitions supersede the same definitions in “underlying insurance”.

1. “Defense expenses” mean payments allocated to a specific claim or “suit” for its investigation, settlement, or defense, including:

- a. Attorney fees and all other litigation expenses;
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance;
- c. The approved Claims Organization service expenses or fees;
- d. All costs taxed against the insured in the claim or “suit”.
- e. Prejudgment interest awarded against the insured on that part of the judgment you pay within the applicable “self-insured retention”;
- f. All interest on the full amount of any judgment that accrues after entry of the judgment and before you have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable “self-insured retention”.

“Defense expenses” does not include normal operating expenses, salaries or expenses of our employees or your employees.

2. “Named insured” means any persons or organizations shown in the named insured section of the Declarations of this Coverage Part. Refer to the [WHO IS AN INSURED section](#) of this Coverage Part.

3. “Occurrence”

The definition of the term “occurrence” contained in “underlying insurance” applies to this insurance, whether described as an “occurrence”, injury, offense or wrongful act.

4. “Other insurance” means insurance which is available to any insured and covers injury or damage to which this insurance applies, other than:

- a. “Underlying insurance”; or
- b. Insurance which is specifically purchased by you to be excess of the insurance afforded by this insurance.

5. “Pollution cost or expense” means any loss, cost or expense arising out of any:

- a. Request, demand, order or statutory or regulatory requirement 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
- b. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, “pollutants”.

6. “Silica” means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

7. “Silica-Related Dust” means a mixture or combination of silica and other dust or particles.

8. "Underlying insurance" means any policies of insurance listed in the declarations under the schedule of "underlying insurance".
9. "Underlying insurer" means the insurer of the "underlying insurance" or "other insurance" policies.
10. "Certified Act of Terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:
 - a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
 - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
12. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part or underlying insurance to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part or underlying insurance.
13. "Certified Act of Terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a "certified act of terrorism":
 - a. The act resulted in aggregate losses in excess of \$5 million; and
 - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
14. "Other Act of Terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. However, "other act of terrorism" does not include an act which meets the criteria set forth in Paragraph b. of the definition of "Certified Act of Terrorism" when such act resulted in aggregate losses of \$5 million or less. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

C. In the event of an "Other Act of Terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

D. With respect to any one or more "Certified Acts of Terrorism", we will not pay any amounts for which we are not responsible under the terms of the federal Terrorism Risk Insurance Act of 2002



(including subsequent acts of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

SECTION VI. DEFENSE AND SUPPLEMENTARY PAYMENTS

A. Defense

1. At our discretion, we may:
 - a. Investigate any “occurrence” or claim; and
 - b. Settle any claim or “suit” of which we assume control of the settlement or defense.
2. We have the right, but not the duty, to associate with “underlying insurers” or other insurers in the defense and control of any claim or “suit” to which we think this insurance may apply.
3. We have the right and duty to defend any “suit” against any insured seeking damages to which this insurance applies when “underlying insurance” or “other insurance”:
 - a. Do not apply; or
 - b. Cease to apply because of exhaustion of their limits of insurance solely by the payment of claims, settlements, judgments or claims expense for “occurrence” to which this insurance also applies.
4. We have no duty to defend any insured against any “suit”:
 - a. Seeking damages to which this insurance does not apply; or
 - b. After the applicable Limit of Insurance of this insurance has been exhausted by payment of judgments or settlements.

B. Supplementary Payments

1. We will pay, with respect to any claim we investigate or settle, or any “suit” against an insured we defend, when the duty to defend exists:
 - a. All expenses we incur;
 - b. Costs taxed against any insured in the “suit”;
 - c. The cost of appeal bonds or bonds to release attachments. But we will only pay for bond amounts to which Our Limits of Insurance apply. We do not have to furnish these bonds;
 - d. Other reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit”. This includes actual loss of earnings up to \$50 a day, because of time off from work;
 - e. Prejudgment interest awarded against any insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - f. Interest on the amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
2. As respects any claim or “suit” to which this insurance applies and for which we do not assume control of the settlement or defense:
 - a. We will pay expenses we directly incur at our discretion; and
 - b. We will not pay expenses:
 - i. Incurred by any insured; or
 - ii. Included in “underlying insurance” or “other insurance”.
3. If we defend an insured against a “suit” and an indemnitee of the insured is also named as a party to the “suit”, we will defend that indemnitee if all of the following conditions are met:

- a. The “suit” against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an “insured contract”;
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same “insured contract”;
- d. The allegations in the “suit” and the information we know about the “occurrence” are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such “suit” and agree that we can assign the same counsel to defend the insured and the indemnitee and;
- f. The indemnitee:
 - i. Agrees in writing to:
 1. Cooperate with us in the investigation, settlement or defense of the “suit”;
 2. Immediately send us copies of any demands, notices, summons or legal papers received in connection with the “suit”;
 3. Notify any other insurer whose coverage is available to the indemnitee; and
 4. Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - ii. Provides us with written authorization to:
 1. Obtain records and other information related to the “suit”; and
 2. Conduct and control the defense of the indemnitee in such “suit”.

So long as the above conditions are met, attorneys’ fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Such payments will not be deemed to be damages for “bodily injury” and “property damage and will not reduce the limits of insurance.

Our obligation to defend an insured’s indemnitee and to pay for attorneys’ fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments, or settlements, or the conditions set forth above, or the terms of the agreement in Paragraph f. above, are no longer met.

4. Payment under 1. or 2. above, will not reduce the limits of insurance.