

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW YORK CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

A. The following is added to Paragraph 1. Insuring Agreement of Section I – Coverage A – Bodily Injury And Property Damage Liability:

When we have a duty to defend, we will defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent.

B. The following is added to Exclusion 2.h. Employment-related Practices of Section I – Coverage A – Bodily Injury And Property Damage Liability:

This exclusion does not apply to "bodily injury" arising out of discrimination based on disparate impact or vicarious liability.

C. Exclusion 2.k. Racing Activities of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

k. Racing Activities

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged professional or organized racing, speed, demolition, or stunting activity or contest.

D. The following is added to Paragraph 1.a. Insuring Agreement of Section I – Coverage B – Personal And Advertising Injury Liability:

When we have a duty to defend, we will defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent.

E. Only with respect to liability arising out of the ownership, maintenance or use of "covered autos", the following are added to Paragraph 1. of Supplementary Payments:

h. We will pay all expenses incurred by an insured for first aid to others at the time of an "occurrence".

i. The cost of appeal bonds.

F. Paragraph 1.c. of Section II – Who Is An Insured is replaced by the following:

c. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar valid and collectible insurance available to that organization. However:

(1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

(2) Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

(3) Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

G. Paragraph 2.b.(6) of Section II – Who Is An Insured is replaced by the following:

(6) "Employees" with respect to "bodily injury" to any fellow "employee" of the insured arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

However, this exclusion only applies if the fellow "employee" is entitled to benefits under any workers' compensation, unemployment compensation or disability benefits law, or any similar law.

H. Paragraph 5. of **Section III – Limits Of Insurance** is replaced by the following:

5. If there is "underlying insurance" with a policy period that is nonconcurrent with the policy period of this Commercial Liability Umbrella Coverage Part, the "retained limit(s)" will only be reduced or exhausted by the amount of judgments and settlements 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.

I. **Section IV – Conditions** is revised as follows:

1. The following is added to Paragraph 3. **Duties In The Event Of Occurrence, Offense, Claim Or Suit:**

- e. Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to any agent of ours in New York state, with particulars sufficient to identify the insured, shall be considered to be notice to us.

2. Paragraph 4. **Legal Action Against Us** is replaced by the following:

4. Legal Action Against Us

- a. Except as provided in Paragraph b., no person or organization has a right under this Coverage Part:
 - (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 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 this 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.

- b. With respect to "bodily injury" and "personal and advertising injury" claims, if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an insured:

- (1) Brings an action to declare the rights of the parties under the policy; and
- (2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

3. Paragraph d. of Condition 7. **Representations Or Fraud** is replaced by the following:

- d. We do not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss or damage for which coverage is sought under this policy.

However, with respect to liability arising out of the ownership, maintenance, or use of "covered autos", we will provide coverage to such insured for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages are otherwise covered under the policy.

4. Paragraph **b.** of Condition **6. Premium Audit** is replaced by the following:

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. An audit to determine the final premium due or to be refunded will be completed within 180 days after the expiration date of the policy. But the audit may be waived if the total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1,500. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.

5. Except as provided in Paragraph 4. above, the **Examination Of Your Books And Records** Common Policy Condition continues to apply.

6. Paragraph **11. Loss Payable** is replaced by the following:

11. Loss Payable

Liability under this Coverage Part does not apply to a given claim unless and until:

- a.** The insured or insured's "underlying insurer" has become obligated to pay the "retained limit"; and
- b.** The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a written agreement between the insured, claimant, and us.

7. Paragraph **13. Maintenance Of/Changes To Underlying Insurance** is replaced by the following:

13. Maintenance Of/Changes To Underlying Insurance

Any "underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the exhaustion of the aggregate limit in accordance with the provisions of such "underlying insurance" that results from payment of claims, settlements or judgments to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "underlying insurance". Failure to maintain "underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "underlying insurance" were in full effect.

If there is an increase in the scope of coverage of any "underlying insurance" during the term of this policy, our liability will be no more than it would have been if there had been no such increase.

You must notify us in writing as soon as practicable if any "underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

8. The following provision is added and supersedes any provision to the contrary:

Failure to give notice to us as required under this Coverage Part shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

J. Section V – Definitions is revised as follows:

The "insured contract" definition is replaced by the following:

"Insured contract" means:

- a.** A lease of premises;
- b.** A sidetrack agreement;
- c.** An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
- d.** Any other easement agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- e.** An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
- f.** That part of any contract or agreement entered into, as part of your business, by you or any of your "employees", pertaining to the rental or lease of any "auto"; or

- g.** That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily injury" or "property damage". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- a.** That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver;
- b.** That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a "covered auto" over a route or territory that person or organization is authorized to serve by public authority; or
- c.** Under which the insured assumes liability for injury or damage caused by the dumping, discharge or escape of:
 - (1)** Irritants, pollutants or contaminants that are, or that are contained in, any property that is:
 - (a)** Being moved from the place where such property or pollutants are accepted by the insured for movement into or onto the "covered auto";
 - (b)** Being transported or towed by the "covered auto";
 - (c)** Being moved from the "covered auto" to the place where such property or pollutants are finally delivered, disposed of or abandoned by the insured;
 - (d)** Otherwise in the course of transit; or
 - (e)** Being stored, disposed of, treated or processed in or upon the "covered auto" other than fuels, lubricants, fluids, exhaust gases or other similar pollutants that are needed for, or result from, the normal electrical, hydraulic or mechanical functioning of the "covered auto" or its parts.

- (2)** Irritants, pollutants or contaminants not described in **(1)** above, unless:

- (a)** The pollutants or any property in which the pollutants are contained are upset, overturned or damaged as a result of the maintenance or use of the "covered auto"; and
- (b)** The discharge, dispersal, release or escape of the pollutants is caused directly by such upset, overturn or damage.

Paragraph **11.** "Loading or unloading" does not apply.

K. The following provision is added:

It is hereby understood and agreed that, notwithstanding anything in this policy to the contrary, with respect to such insurance as is afforded by this policy, the terms of this policy, as respects coverage for operations in the state of New York, must conform to the coverage requirements of the applicable insurance laws of the state of New York or the applicable regulations of the New York Insurance Department; provided, however, that the company's limits of insurance, as stated in this policy, are excess of the limits of any underlying insurance or self-insurance, as stated in the Declarations, or in any attached endorsement.