

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **STOP GAP – EMPLOYERS LIABILITY COVERAGE ENDORSEMENT – WEST VIRGINIA**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

### **SCHEDULE**

<b>Limits Of Insurance</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. The following is added to **Section I –****

**Coverages:**

**COVERAGE – STOP GAP – EMPLOYERS  
LIABILITY**

**1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated by West Virginia Law to pay as damages because of "bodily injury by accident" or "bodily injury by disease" to your "employee" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any accident and settle any claim or "suit" that may result. But:

- (1)** The amount we will pay for damages is limited as described in **Section III – Limits Of Insurance**; and  
**(2)** Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under this coverage.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b.** This insurance applies to "bodily injury by accident" or "bodily injury by disease" only if:

**(1) The:**

- (a)** "Bodily injury by accident" or "bodily injury by disease" takes place in the "coverage territory";  
**(b)** "Bodily injury by accident" or "bodily injury by disease" arises out of and in the course of the injured "employee's" employment by you; and  
**(c)** "Employee", at the time of the injury, was covered under a worker's compensation policy and subject to a "workers compensation law" of West Virginia; and

**(2) The:**

- (a)** "Bodily injury by accident" is caused by an accident that occurs during the policy period; or

- (b) "Bodily injury by disease" is caused by or aggravated by conditions of employment by you and the injured "employee's" last day of last exposure to the conditions causing or aggravating such "bodily injury by disease" occurs during the policy period.
- c. The damages we will pay, where recovery is permitted by law, include damages:
- (1) For:
- (a) Which you are liable to a third party by reason of a claim or "suit" against you by that third party to recover the damages claimed against such third party as a result of injury to your "employee";
- (b) Care and loss of services; and
- (c) Consequential "bodily injury by accident" or "bodily injury by disease" to a spouse, child, parent, brother or sister of the injured "employee"; provided that these damages are the direct consequence of "bodily injury by accident" or "bodily injury by disease" that arises out of and in the course of the injured "employee's" employment by you; and
- (2) Because of "bodily injury by accident" or "bodily injury by disease" to your "employee" that arises out of and in the course of employment, claimed against you in a capacity other than as employer.
- 2. Exclusions**
- This insurance does not apply to:
- a. Intentional Injury**
- "Bodily injury by accident" or "bodily injury by disease" intentionally caused or aggravated by you, or "bodily injury by accident" or "bodily injury by disease" resulting from an act which is determined to have been committed by you if it was reasonable to believe that an injury is substantially certain to occur.
- b. Fines Or Penalties**
- Any assessment, penalty, or fine levied by any regulatory inspection agency or authority.
- c. Statutory Obligations**
- Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- d. Contractual Liability**
- Liability assumed by you under any contract or agreement.
- e. Violation Of Law**
- "Bodily injury by accident" or "bodily injury by disease" suffered or caused by any employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your "executive officers".
- f. Termination, Coercion Or Discrimination**
- Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any "employee", or arising out of other employment or personnel decisions concerning the insured.
- g. Failure To Comply With "Workers Compensation Law"**
- "Bodily injury by accident" or "bodily injury by disease" to an "employee" when you are:
- (1) Deprived of common law defenses; or
- (2) Otherwise subject to penalty; because of your failure to secure your obligations or other failure to comply with any "workers compensation law".
- h. Violation Of Age Laws Or Employment Of Minors**
- "Bodily injury by accident" or "bodily injury by disease" suffered or caused by any person:
- (1) Knowingly employed by you in violation of any law as to age; or
- (2) Under the age of 14 years, regardless of any such law.
- i. Federal Laws**
- Any premium, assessment, penalty, fine, benefit, liability or other obligation imposed by or granted pursuant to:
- (1) The Federal Employer's Liability Act (45 USC Section 51-60);
- (2) The Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173);

- (3) The Longshore and Harbor Workers' Compensation Act (33 USC Sections 910-950);
  - (4) The Outer Continental Shelf Lands Act (43 USC Section 1331-1356);
  - (5) The Defense Base Act (42 USC Sections 1651-1654);
  - (6) The Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942);
  - (7) The Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872);
  - (8) Any other workers compensation, unemployment compensation or disability laws or any similar law; or
  - (9) Any subsequent amendments to the laws listed above.
- j. Punitive Damages**  
Multiple, exemplary or punitive damages.
- k. Crew Members**  
"Bodily injury by accident" or "bodily injury by disease" to a master or member of the crew of any vessel or any member of the flying crew of an aircraft.
- l. West Virginia Workers Compensation Law, Sect. 23-4-2**  
"Bodily injury by accident" or "bodily injury by disease" caused by any action determined to be of deliberate intention as specified under West Virginia Workers Compensation Law, Sect. 23-4-2.
- B. The Supplementary Payments** provisions apply to Coverage . Stop Gap Employers Liability as well as to Coverages **A** and **B**.
- C. For the purposes of this endorsement, Section II – Who Is An Insured**, is replaced by the following:  
If you are designated in the Declarations as:
- 1. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - 2. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - 3. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - 4. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.
- D. For the purposes of this endorsement, Section III Limits Of Insurance**, is replaced by the following:
- 1. The Limits of Insurance shown in the Schedule of this endorsement and the rules below fix the most we will pay regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  - 2. The "Bodily Injury By Accident" . Each Accident Limit shown in the Schedule of this endorsement is the most we will pay for all damages covered by this insurance because of "bodily injury by accident" to one or more "employees" in any one accident.
  - 3. The "Bodily Injury By Disease" . Aggregate Limit shown in the Schedule of this endorsement is the most we will pay for all damages covered by this insurance and arising out of "bodily injury by disease", regardless of the number of "employees" who sustain "bodily injury by disease".
  - 4. Subject to Paragraph **D.3.** of this endorsement, the "Bodily Injury By Disease" . Each "Employee" Limit shown in the Schedule of this endorsement is the most we will pay for all damages because of "bodily injury by disease" to any one "employee".
- The limits of the coverage 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.

E. For the purposes of this endorsement, Condition **2. – Duties In The Event Of Occurrence, Claim Or Suit** of the Conditions Section IV is deleted and replaced by the following:

**2. Duties The Event Of Injury, Claim Suit**

- a. You must see to it that we or our agent are notified as soon as practicable of a "bodily injury by accident" or "bodily injury by disease" which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "bodily injury by accident" or "bodily injury by disease" took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury.
- 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.You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the injury, claim, proceeding or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us and assist us, as we may request, 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 to which this insurance may also apply; and
  - (5) Do nothing after an injury occurs that would interfere with our right to recover from others.
- 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.

F. For the purposes of this endorsement, Paragraph 4. of the **Definitions** Section is replaced by the following:

**4. "Coverage territory" means:**

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of the activities of a person whose home is in the territory described in a. above, but who is away for a short time on your business;
- provided the insured's responsibility to pay damages is determined in the United States (including its territories and possessions), Puerto Rico, or Canada, in a suit on the merits according to the substantive law in such territory, or in a settlement we agree to.

G. The following are added to the **Definitions** Section:

- 1. "Workers Compensation Law" means the Workers Compensation Law and any Occupational Disease Law of West Virginia. This does not include provisions of any law providing non-occupational disability benefits.
- 2. "Bodily injury by accident" means bodily injury, sickness or disease sustained by a person, including death, resulting from an accident. A disease is not "bodily injury by accident" unless it results directly from "bodily injury by accident".
- 3. "Bodily injury by disease" means a disease sustained by a person, including death. "Bodily injury by disease" does not include a disease that results directly from an accident.

H. For the purposes of this endorsement, the definition of "bodily injury" does not apply.