



# Insurance Agents and Brokers Errors and Omissions Liability Insurance

THIS IS A CLAIMS MADE AND REPORTED POLICY.

In consideration of the premium paid, the undertaking of the Named Insured to pay the Deductible as described herein and in the amount stated in the Declarations, in reliance upon the statements in the application deemed attached hereto and made a part hereof and the underwriting information submitted on behalf of the Insured, and subject to the terms, conditions and limitations of this policy, the Company and the Insured agree as follows:

## INSURING AGREEMENTS

### A. Errors and Omissions Coverage:

The Company shall pay on behalf of the Insured all sums in excess of the Deductible stated in Item 5 a & b of the Declarations which the Insured shall become legally obligated to pay as Damages as a result of a Claim first made against the Insured and reported to the Company during the Policy Period, Automatic Extended Reporting Period, or Optional Extended Reporting Period, if exercised, by reason of a Wrongful Act or Personal Injury in the performance of Professional Services rendered or that should have been rendered by the Insured or by any other person or organization for whose Wrongful Act or Personal Injury the Insured is legally responsible, provided the Wrongful Act or Personal Injury happens during the Policy Period or on or after the Retroactive Date stated in Item 6. of the Declarations and before the end of the Policy Period.

### B. Defense, Settlements and Claim Expenses:

1. **Defense, Investigation and Settlement of Claims:** The Company shall have the right and duty to defend and investigate any Claim to which coverage under this policy applies pursuant to the following:

- (a) Claim Expenses incurred in defending and investigating such Claim shall be in addition to the Limits of Liability stated in Item 4. of the Declarations. Such Claim Expenses shall not reduce the Limits of Liability and shall not be applied against the Deductible. The Company shall have no obligation to pay any Damages or to defend or continue to defend any Claim or to pay Claim Expenses after the Limits of Liability stated in Item 4. of the Declarations have been exhausted by payment(s) of Damages.
- (b) The Company shall select defense counsel; provided, however, that if the law of the state of the Named Insured's domicile, stated in Item 2. of the Declarations, allows the Insured to control the selection of defense counsel where a conflict of interest has arisen between the Insured and the Company. The Company will provide a list of attorneys or law firms from which the Insured may designate defense counsel who shall act solely in the interest of the Insured, and the Insured shall direct such defense counsel to cooperate with the Company. Such cooperation shall include:
  - (i) providing on a regular basis, but not less frequently than every three (3) months, written reports on claimed Damages, potential liability, progress of any litigation, any settlement demands, or any investigation developments that materially affect the Claim;
  - (ii) providing any other reasonable information requested;
  - (iii) fully itemized billing on a periodic basis; and
  - (iv) cooperating with the Company and the Insured in resolving any discrepancies;

and the fees and costs incurred by such defense counsel, including those fees and costs generated by cooperation with the Company, as set forth above, shall be included in Claim Expenses. Such Claim Expenses shall be in addition to the Limits of Liability stated in Item 4. of the Declarations. Such Claim Expenses shall not reduce the Limits of Liability and shall not be applied against the Deductible.

The Company shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle any Claim after the Limits of Liability stated in Item 4. of the Declarations have been exhausted by payment(s) of Damages.

2. **Consent to Settlement:** The Company shall not settle any Claim without the prior written consent of the first Named Insured, but the Company shall have, at all times, the right to recommend a settlement of any Claim. If the first Named Insured shall refuse to settle such Claim pursuant to the Company's recommendations, then the Company's liability in regard to such Claim shall not exceed the amount for which the Claim could have been settled and the amount of any Claim Expenses incurred up to the date of the first Named Insured's refusal to settle the Claim. Such amounts are subject to the provisions stated in the Limits of Liability Section.

## SUPPLEMENTARY PAYMENTS

- A. **Disciplinary Proceedings:** Upon submission to the Company of satisfactory written proof of payment, the Company shall reimburse the Named Insured up to fifty thousand dollars (\$50,000 ) per Policy Period for all reasonable and necessary legal fees and legal expenses incurred and paid by the Named Insured in response to a Disciplinary Proceeding first initiated during the Policy Period,

provided:

1. the Wrongful Act or Personal Injury giving rise to the Disciplinary Proceeding happens during the Policy Period or on or after the Retroactive Date stated in Item 6. of the Declarations and before the end of the Policy Period; and
2. prior to the effective date of this policy the Insured had no knowledge of such Wrongful Act or Personal Injury or any fact, circumstance, situation or incident which would lead a reasonable person in the Insured's position to conclude that a Disciplinary Proceeding was likely.

The Named Insured shall give the Company written notice as stated in Item 9. of the Declarations as soon as practicable of any Disciplinary Proceeding first initiated against the Insured during the Policy Period. In any event, such Disciplinary Proceeding must be reported to Markel Services, Incorporated, on behalf of the Company, within sixty (60) days after the end of the Policy Period.

No reimbursement pursuant to this Section A. shall be made for the Named Insured's payment of any taxes; criminal or civil fines, penalties or sanctions; registration or licensing fees; or any monetary judgment, award or settlement of any kind.

Reimbursement to the Named Insured pursuant to this Section shall be in addition to the Limits of Liability stated in Item 4. of the Declarations and shall not be subject to the Deductible.

- B. **Loss of Earnings and Expense Reimbursement:** Upon submission to the Company of satisfactory written proof of payment, the Company shall reimburse the Named Insured as expense reimbursement for all reasonable and necessary expenses incurred by an Insured at the Company's written request for attendance at any deposition, hearing or trial in connection with a Claim to which this policy applies. The Named Insured shall give the Company written notice as stated in Item 9. of the Declarations of written proof of payment of expenses as soon as practicable. In any event, such written proof of payment must be reported to Markel Service, Incorporated, on behalf of the Company, within sixty (60) days after incurring such expenses.

The Company shall compensate the Named Insured for loss of earnings of an Insured, a maximum of five hundred dollars (\$500) per day for all Insureds to attend at the Company's written request any deposition, hearing or trial in connection with a Claim to which this policy applies.

The maximum the Company shall pay the Named Insured for all Insureds for compensation of all loss of earnings and expense reimbursement for all Claims to which this policy applies and all attendances at the Company's written request is fifty thousand dollars (\$50,000) per policy period.

Reimbursement to the Named Insured pursuant to this Section B. shall be in addition to the Limits of Liability stated in Item 4. of the Declarations and shall not be subject to the Deductible.

C. **Pre-Claims Assistance:** In the event that during the Policy Period:

1. the Insured first receives a subpoena or a request for the Insured's records or files relative to a Wrongful act or Personal Injury in the performance of Professional Services rendered or that should have been rendered by the Insured or by any person or organization for whose Wrongful Act or Personal Injury the Insured is legally responsible; and
2. the insured reports the receipt of such subpoena or request in writing to the Company as stated in Item 10. of the Declarations within thirty (30) days of such receipt and prior to a Claim being first made against the Insured arising out of such Wrongful Act or Personal Injury;

Then the Company shall pay on behalf of the Insured, up to ten thousand dollars (\$10,000) per Policy Period for reasonable and necessary legal fees and legal expenses incurred for engaging the services of legal counsel selected by the Company to assist the Insured in responding to such subpoena or request.

Payment on behalf of the Insured pursuant to this Section C. shall be in addition to the Limits of Liability stated in Item 4. of the Declarations and shall not be subject to the Deductible.

## DEFINITIONS

- A. **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- B. **Claim** means the Insured's receipt of:
1. a written demand for money or remedial Professional Services involving this policy, including any civil proceeding; or
  2. the service of suit or institution of arbitration proceedings against the Insured;
- provided, however, Claim shall not include Disciplinary Proceeding.
- C. **Claim Expenses** means reasonable and necessary amounts incurred by the Company, or by the Insured with the Company's prior written consent, in the defense of that portion of any Claim for which coverage is afforded under this policy, including costs of investigation, court costs, costs of bonds to release attachments and similar bonds, but without any obligation of the Company to apply for or furnish any such bonds, and costs of appeals, and prejudgment and post judgment interest awarded in any Claim; provided, however, that Claim Expenses shall not include: (1) salary, wages, overhead, or benefit expenses of or associated with employees or officials of the Named Insured or employees or officials of the Company; or (2) salary, wages, administration, overhead, benefit expenses, or charges of any kind attributable to any in-house counsel or captive out-of-house counsel for the Named Insured or the Company.
- D. **Damages** means the monetary portion of any judgment, award or settlement, including punitive and exemplary damages where insurable; provided, however, Damages shall not include: (1) multiplied portions of damages in excess of actual damages, including trebling of damages; (2) taxes, criminal or civil fines or other penalties imposed by law; (3) sanctions; (4) matters which are uninsurable under the law pursuant to which this policy shall be construed; or (5) the cost to comply with any injunctive or other non-monetary or declaratory relief or any agreement to provide such relief.
- E. **Disciplinary Proceeding** means the Insured's receipt of any proceeding by a regulatory body, disciplinary board or governmental agency, any of which has the authority to investigate charges of professional misconduct in the performance of Professional Services; provided, however, Disciplinary Proceeding shall not include any criminal proceeding.
- F. **Insured** either in the singular or plural means:
1. the Named Insured herein defined as the person(s) or organization(s) stated in Item 1. of the Declarations;
  2. any Predecessor Organization of the Named Insured;
  3. any past or current principal, partner, officer, director, trustee, shareholder or employee of the Named Insured or its Predecessor Organization solely while acting on behalf of the Named Insured or its Predecessor Organization and within the scope of their duties as such;

4. if the Named Insured stated in Item 1. of the Declarations is a limited liability company, any past or current manager thereof, solely while acting on behalf of the Named Insured and within the scope of their duties as manager of such limited liability company and any past or current member thereof, solely while acting on behalf of the Named Insured or its Predecessor Organization and within the scope of their duties as a member of such limited liability company;
  5. any natural person who is an independent contractor of the Named Insured or its Predecessor Organization solely while acting on behalf of the Named Insured or its Predecessor Organization and within the scope of their duties as such; and
  6. the spouses and legally recognized domestic partners of **Insureds** shall be considered **Insureds** under this **Policy**, but coverage is afforded only for a **Claim** arising solely out of their status as a spouse or domestic partner where the **Claim** seeks damages from marital community property, jointly held property or property transferred from a natural person **Insured** to such spouse or legally recognized domestic partner. No coverage is provided for any **Wrongful Act or Personal Injury** actually or allegedly committed by such spouse or legally recognized domestic partner.
  7. the heirs, executors, administrators, assigns and legal representatives of each Insured above in the event of death, incapacity, or bankruptcy of such Insured but only for such Insured's liability as otherwise covered herein.
- G. **Mediation** means the voluntary process in which an objective third party who is a qualified professional mediator selected by the parties to the Claim, with written agreement of the Company, intervenes between the parties in an attempt to achieve settlement of the Claim. Mediation does not include litigation, arbitration or any court mandated proceeding.
- H. **Personal Injury** means:
1. libel, slander or other defamatory or disparaging material.
  2. malicious prosecution, false arrest or false imprisonment.
  3. publication or an utterance in violation of an individual's right to privacy, including but not limited to intrusion, public disclosure of private facts, or false light.
  4. unauthorized dissemination of financial or medical records.
  5. wrongful entry or eviction, or other invasion of the right to private occupancy.
  6. advertising injury including unfair competition, dilution, deceptive trade practices, misrepresentation, wrongful publication, libel, slander, or other defamation in the Named Insured's Media communications or advertisements.
  7. misappropriation, or misdirection of messages or media of third parties by the Insured.
  8. infringement of copyright or plagiarism
  9. mental injury, mental anguish, mental tension or emotional distress.
- I. **Policy Period** means the period from the inception date of this policy to the policy expiration date stated in Item 3. of the Declarations, or the effective date of any earlier cancellation or termination.
- J. **Predecessor Organization** means any organization which was engaged in the same essential types of insurance activities as the Named Insured, in whose financial assets and liabilities the Named Insured is the majority successor in interest.

K. **Professional Services** means the following services rendered for others:

1. Insurance Wholesaler;
2. Insurance Managing General Agent;
3. Insurance General Agent;
4. Insurance Underwriting Manager;
5. Insurance Program Administrator;
6. Insurance Agent;
7. Insurance Broker;
8. Insurance Surplus Lines Broker;
9. Insurance Consultant;
10. Insurance Claims Administrator;
11. Insurance Appraiser;
12. Insurance Premium Financier;
13. Notary Public; and
14. Life and/or Health Agent or Broker.
15. Lecturer, speaker, instructor or teacher at any Insurance convention or at any other meeting or course where approved Department of Insurance continuing education credits may be earned.
16. Expert witness concerning any Insurance related subject.

L. **Property Damage** means

1. physical injury to or destruction of tangible property, including consequential loss of use thereof;  
or
2. loss of use of tangible property which has not been physically injured or destroyed.

M. **Standard Agency, Brokerage, or Claims Administrator Agreement** means any executed written contract entered into by the Named Insured with any insurer, the purpose of which is to establish a relationship whereby the Named Insured represents the insurer in an agent, broker, wholesaler, general agent, managing general agent, underwriting manager, or claims administrator capacity.

N. **Wrongful Act** means any act, error or omission in Professional Services.

## THE EXCLUSIONS

This policy does not apply to any Claim:

- A. based upon or arising out of any actual dishonest, fraudulent, criminal or malicious act, error or omission by an Insured; provided, however, this exclusion shall not apply to any Insured who:
  1. did not personally commit, participate in, or acquiesce in the act, error or omission;
  2. did not remain silent or passive after having personal knowledge of the act, error, or omission;  
and
  3. notified the Company immediately upon becoming aware of the act, error, or omission;
- B. based upon or arising out of any actual or alleged Bodily Injury or Property Damage; provided, however, this exclusion shall not apply to the extent such Claim is based upon or arises out of any Wrongful Act or Personal Injury of the Insured which arises out of the rendering or failure to render Professional Services;
- C. based upon or arising out of the liability of others assumed by the Insured under any contract or agreement; provided, however this exclusion shall not apply to:

1. liability an Insured would have in the absence of the contract or agreement by reason of a Wrongful Act or Personal Injury committed by the Insured; or
  2. liability the Named Insured or any Predecessor Organization assumed under a Standard Agency, Brokerage, or Claims Administrator Agreement to indemnify an insurer whom the Insured represents for loss or defense expenses the insurer incurs solely and exclusively due only to a Wrongful Act or Personal Injury committed by the Insured or by any other person or organization for whose Wrongful Act or Personal Injury the Insured is legally responsible;
- D. based upon or arising out of Professional Services performed for any organization if at the time the Professional Services were rendered:
1. any Insured operated or managed such organization other than the Named Insured;
  2. any Insured was a principal, partner, officer, director, trustee, member, manager or employee of such organization;
  3. any Insured owned, directly or indirectly, ten percent (10%) or more if such organization is publicly held or thirty percent (30%) or more if such organization is a privately held organization; or
  4. such organization directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the Named Insured;
- E. by or on behalf of another Insured;
- F. based upon, arising out of or in any way involving viatical settlements, viatical contracts, viatical investments or acts and/or services as a registered representative or broker/dealer of securities or commodities;
- G. based upon or arising out of any actual or alleged violation of any antitrust, restraint of trade or other law, rule or regulation which protects competition;
- H. based upon or arising out of any actual or alleged violation of the Employee Retirement Income Security Act of 1974, Securities Act of 1933, Securities Exchange Act of 1934, or any state securities law, including any rules or regulations promulgated under any such law or any other similar federal, state or common law or any amendments thereto;
- I. based upon or arising out of a Wrongful Act or Personal Injury actually or allegedly committed prior to the effective date of this policy, if, on or before the earlier of: (1) the effective date of this policy; or (2) the effective date of any policy issued by the Company to which this policy is a continuous renewal or replacement; knowledge of such Wrongful Act or Personal Injury may have led a reasonable person in the Insured's position to conclude that a Claim was likely;
- J. based upon, arising out, or in any way involving any Wrongful Act or Personal Injury or any fact, circumstance, situation or incident that has been the subject of any notice given prior to the Policy Period under any other policy of insurance or to any reinsurer, risk retention group or captive (or any other self-insurance plan or trust by whatsoever name) or insurance representative;
- K. based upon or arising out of notarized certification or acknowledgement of a signature without the physical appearance at the time of said notarization before such notary public as insured hereunder, of the person who is or claims to be the person signing said instrument;
- L. based upon or arising out of the insolvency, receivership, bankruptcy, liquidation or financial inability to pay, of any insurance company, reinsurer, risk retention group or captive (or any other self-insurance plan or trust by whatsoever name) in which the Insured has placed or obtained coverage for a client or an account; provided, however, this exclusion shall not apply if the insurance company, reinsurer, risk retention group or captive (or any other self-insurance plan or trust by whatsoever name) held an A.M. Best's rating of B+ or higher at the time that the Insured placed insurance with such organization;
- M. based upon or arising out of allegations of intentional failure or refusal to collect, pay, or return any policy premium, return premium, commission, tax, or policy fee of any kind; or

- N. based upon or arising out of the placement of insurance on any property in the care, custody or control of the Insured at any time.

## TERRITORY

The insurance afforded by this policy applies worldwide, provided that the Claim is made in the United States of America, its territories or possessions, Puerto Rico or Canada.

## LIMITS OF LIABILITY

- A. **Limit of Liability - Each Claim:** The Limit of Liability of the Company for Damages for each Claim first made against the Insured during the Policy Period, Automatic Extended Reporting Period, if applicable, or Optional Extended Reporting Period, if exercised, shall not exceed the Limit of Liability stated in Item 4.A. of the Declarations as applicable to Each Claim.
- B. **Limit of Liability – Policy Aggregate:** Subject to the above Limits of Liability A., the total liability of the Company shall not exceed the Policy Aggregate Limit of Liability stated in Item 4.B. of the Declarations for all Damages arising out of all Claims first made against the Insured during the Policy Period, Automatic Extended Reporting Period, if applicable, and Optional Extended Reporting Period, if exercised.
- C. **Deductible:** The Deductible amount stated in Item 5a. of the Declarations shall be paid by the Named Insured and shall be applicable to each Claim. The Deductible amount stated in Item 5b. of the Declarations shall be paid by the Named Insured and shall be the aggregate deductible for the Policy Period.

The Deductible will apply to damages only and not to Claim Expenses.

Such amounts shall, upon written demand by the Company, be paid by the Named Insured within ten (10) days. The total payments requested from the Named Insured in respect of each Claim shall not exceed the Deductible amount stated in Item 5 a & b of the Declarations. The determination of the Company as to the reasonableness of the Claim Expenses shall be conclusive on the Named Insured.

- D. **Deductible Credits:** If a Claim is settled without litigation, arbitration, Mediation or court mandated proceedings, the Deductible for such Claim will be reduced by seventy-five percent (75%) or twenty-five thousand dollars (\$25,000), whichever is less.

If the Named Insured and the Company agree to the use of Mediation and a Claim is settled at that Mediation, the Deductible for such Claim will be reduced by fifty percent (50%) or twenty-five thousand dollars (\$25,000), whichever is less.

- E. **Multiple Insureds, Claims and Claimants:** The inclusion herein of more than one Insured in any Claim or the making of Claims by more than one person or organization shall not operate to increase the Limits of Liability stated in Item 4. of the Declarations. More than one Claim arising out of a single Wrongful Act or Personal Injury or a series of related Wrongful Acts or Personal Injuries shall be considered to be a single Claim. All such Claims, whenever made, shall be treated as a single Claim. Such single Claim, whenever made, shall be deemed to be first made on the date on which the earliest Claim arising out of such Wrongful Act or Personal Injury is made or with regard to notice given to and accepted by the Company pursuant to Section Claims B., Notice of Potential Claims, on the date within the Policy Period on which such notice of potential Claim is first received by the Company.

## CLAIMS

- A. **Claim Reporting Provision:** It is a condition precedent to coverage afforded by this policy that the Insured shall give the Company written notice as stated in Item 9. of the Declarations as soon as practicable of any Claim first made against the Insured during the Policy Period, the Automatic Extended Reporting Period, or the Optional Extended Reporting Period, if exercised. In any event, such Claim must be reported to Markel Service, Incorporated, Ten Parkway North, Deerfield, Illinois, 60015, on behalf of the Company: (1) within sixty (60) days after the end of the Policy Period; (2) during the Automatic Extended Reporting Period, or (3) during the Optional Extended Reporting Period, if exercised.

In the event a suit is brought against the Insured, the Insured shall immediately forward to Markel Service, Incorporated, Ten Parkway North, Deerfield, Illinois, 60015, on behalf of the Company, every demand, notice, summons or other process received by him/her or by his/her representatives.

- B. **Notice of Potential Claims:** If during the Policy Period, any Insured first becomes aware of a specific Wrongful Act or Personal Injury which is reasonably expected to result in a Claim within the scope of coverage of this policy, then the Insured may provide written notice as stated in Item 9. of the Declarations to the Company containing the information listed below. If such written notice is received by the Company during the Policy Period, then any Claim subsequently made against the Insured arising out of such Wrongful Act or Personal Injury shall be deemed for the purpose of this insurance to have been first made on the date on which such written notice is received by the Company.

It is a condition precedent to the coverage afforded by this Notice of Potential Claims that written notice be given to the Company containing the following information:

1. the description of the specific Wrongful Act or Personal Injury;
2. the date on which such Wrongful Act or Personal Injury took place;
3. the injury or damage which has or may result from such Wrongful Act or Personal Injury;
4. the identity of any injured person and/or organization subject to such injury or damage; and
5. the date when and circumstances by which the Insured first became aware of such Wrongful Act or Personal Injury.

Subject to the paragraphs hereinabove, if during the Policy Period the Insured provides such written notice of a specific Wrongful Act or Personal Injury which is reasonably expected to result in a Claim within the scope of coverage of this policy, the Company at its sole option, may investigate such specific Wrongful Act or Personal Injury. Such matter shall be subject to all terms, conditions and provisions in this policy as applicable to a Claim.

- C. **Assistance and Cooperation:** The Insured shall cooperate with the Company and upon the Company's request, the Insured shall: (1) submit to examination and interview by a representative of the Company, under oath if required; (2) attend hearings, depositions and trials; (3) assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses in the conduct of suits; and (4) give a written statement or statements to the Company's representatives and meet with such representatives for the purpose of determining coverage and investigating and/or defending any Claim; all without cost to the Company, other than expense reimbursement provided under Section Supplementary Payments B. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any right of indemnity, contribution or apportionment which the Insured may have.

The Insured shall not, with respect to any Claim covered under this policy, except at his/her own cost, make any payment, admit any liability, settle any Claims, assume any obligation, agree to arbitration or any similar means of resolution of any dispute, waive any rights or incur Claim Expenses without the Company's prior written consent, such consent not to be unreasonably withheld. Any costs and expenses incurred by the Insured prior to the Insured giving written notice of the Claim to the Company shall be borne by the Insured and will not constitute satisfaction of the Deductible.



## EXTENDED REPORTING PERIODS

If the Named Insured nonrenews this policy or cancels this policy pursuant to Section Other Conditions A., or if the Company nonrenews this policy pursuant to Section Other Conditions B. or cancels this policy pursuant to Section Other Conditions A., for reasons other than nonpayment of premium or Deductible or non-compliance with the terms and conditions of this policy, the Named Insured shall have the right to an extended reporting period as follows:

- A. **Automatic Extended Reporting Period:** Coverage as provided under this policy shall automatically continue for a period of sixty (60) days following the effective date of such cancellation or nonrenewal, but only with respect to a Claim first made against the Insured and reported to the Company during the Automatic Extended Reporting Period and only with respect to Claims for Wrongful Acts or Personal Injuries committed before the effective date of such cancellation or nonrenewal and on or after the Retroactive Date stated in Item 6. of the Declarations. This period shall be referred to herein as the Automatic Extended Reporting Period.

The Automatic Extended Reporting Period, if applicable, shall not in any way increase the Limits of Liability stated in Item 4. of the Declarations.

- B. **Optional Extended Reporting Period:** The Named Insured shall have the right, upon payment of the additional premium calculated at the percentage of the annual premium for the policy stated herein below, to extend the coverage granted under this policy, to Claims first made against the Insured and reported to the Company during the number of months as elected by the Named Insured for the Optional Extended Reporting Period, but only with respect to Claims for Wrongful Acts or Personal Injuries committed before the effective date of such cancellation or nonrenewal and on or after the Retroactive Date stated in Item 6. of the Declarations. This period shall be referred to herein as the Optional Extended Reporting Period.

The right to purchase the Optional Extended Reporting Period shall terminate unless a written request as stated in Item 9. of the Declarations of such election for the Optional Extended Reporting Period is received by the Company within sixty (60) days after the effective date of cancellation or nonrenewal together with full payment of the additional premium for the Optional Extended Reporting Period. If such written request and premium payment are not so received by the Company, there shall be no right to purchase the Optional Extended Reporting Period at a later date. Once the premium for the Optional Extended Reporting Period has been paid, the Optional Extended Reporting Period may not be cancelled.

In the event of the purchase of the Optional Extended Reporting Period the entire premium therefore shall be fully earned at its commencement. The first sixty (60) days of the Optional Extended Reporting Period, if exercised, shall run concurrently with the Automatic Extended Reporting Period.

The Optional Extended Reporting Period, if exercised, shall not in any way increase the Limits of Liability stated in Item 4. of the Declarations.

Optional Extended Reporting Period	Percentage of Annual Premium
12 months	85%
24 months	110%
36 months	135%
48 months	160%
60 months	185%

## OTHER CONDITIONS

- A. **Cancellation:** This policy may be cancelled by the Named Insured on behalf of all Insureds by mailing to the Company written notice as stated in Item 9. of the Declarations stating when thereafter such cancellation shall be effective. If cancelled by the Named Insured, the earned premium shall be computed at the customary short rate. Payment or tender of any unearned premium shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

This policy may be cancelled by the Company or by its underwriting manager, on behalf of the Company, by mailing to the Named Insured, at the address stated in Item 2. of the Declarations,

written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Company cancels this policy because the Named Insured has failed to pay a premium and/or Deductible when due, this policy may be cancelled by the Company or its underwriting manager, on behalf of the Company, by mailing written notice of cancellation to the Named Insured stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the Policy Period. Such notice shall be conclusive on all Insureds. Delivery of such written notice by the Named Insured, the Company or its underwriting manager shall be equivalent to mailing. If cancelled by the Company or its underwriting manager, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

- B. **Nonrenewal:** This policy may be nonrenewed by the Company or by its underwriting manager, on behalf of the Company, by mailing to the Named Insured at the address stated in Item 2. of the Declarations, written notice of nonrenewal at least sixty (60) days before the end of the Policy Period. Notice of nonrenewal is not required if the Named Insured has insured elsewhere, has accepted replacement coverage or has requested or agreed to nonrenewal.
- C. **Representations:** By acceptance of this policy, the Insureds agree as follows:
1. that the information and statements contained in the application(s) are the basis of this policy and are to be considered as incorporated into and constituting a part of this policy; and
  2. that the information and statements contained in the application(s) are their representations, that they shall be deemed material to the acceptance of the risk or hazard assumed by the Company under this policy, and that this policy is issued in reliance upon the truth of such representations.
- D. **Entire Agreement:** This policy, the Declarations, the application(s) and any written endorsements attached hereto shall be deemed to be a single unitary contract.
- E. **Other Insurance:** This insurance shall be excess of the Deductible stated in Item 5a & b of the Declarations and any other valid and collectible insurance available to the Insured, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this policy.
- F. **Changes:** Notice to any agent or broker or knowledge possessed by any agent or other person acting on behalf of the Company shall not effect a waiver or a change in any part of this policy and shall not estop the Company from asserting any right under the terms of this policy. The terms of this policy shall not be waived or changed, except by written endorsement issued to form a part of this policy, and this policy embodies all agreements existing between the Insureds and the Company or any of its agents relating to this insurance.
- G. **Assignment of Interest:** Assignment of interest under this policy shall not bind the Company unless its consent is endorsed hereon.
- H. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to the rights of recovery of all Insureds to the extent of such payment. The Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the Claim to prejudice such rights.

The Company shall not exercise any such rights against any person or organization included in the definition of Insured.

Any amount so recovered, whether effected by the Company or by the Insured, shall first be used for the repayment of expenses incurred toward subrogation; second, for any Damages and Claim Expenses payment by the Insured which is in excess of the amount of the Limit of Liability under this policy and which is excess of any amount paid by any insurer under any other policy; third, for any damages and claim expenses payment or any loss indemnification or payment by any excess carrier on behalf of the Insured; fourth, for any damages and claim expenses payment or any loss indemnification or payment by any primary carrier on behalf of the Insured; and, last, for repayment of the Insured's Deductible.

- I. **Action Against the Company:** No action shall be brought against the Company, unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms and conditions of this policy, nor until the amount of the Insured's obligation to pay shall have been fully and finally determined either by judgment against the Insured after actual trial and appeal or by written agreement of the Insured, the Claimant and the Company.

Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

- J. **Authorization:** By acceptance of this policy, the first person or organization named in Item 1. of the Declarations shall act on behalf of all Insureds with respect to giving and receiving of all notices to and from the Company as provided hereunder: the cancellation of this policy in whole or part, the payment when due of premiums and Deductibles; the receiving of any return premiums that may become due under this policy; and the Insureds agree that such person or organization shall act on their behalf.

- K. **Acquisitions and Mergers:** If after the inception date of the policy:

1. another organization or person or group of organizations and/or persons acting in concert acquires a majority of the voting securities of the Named Insured or substantially all of the assets of the Named Insured; or
2. the Named Insured is merged with another organization;

then the Named Insured shall give written notice as stated in Item 9. of the Declarations of such change to the Company within thirty (30) days of the effective date of such change. If such notification is not made to the Company, all coverage for the merged or acquired entity will cease thirty (30) days after the date of the merger or acquisition. The Company at its sole discretion may charge an additional premium or amend or cancel coverage following any merger or acquisition.

- L. **Service of Suit:** Except with respect to any policy issued in any state in which the Company is licensed as an admitted insurer to transact business, it is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Secretary, Legal Department, Markel Midwest, Ten Parkway North, Deerfield, Illinois 60015 and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, or Director of Insurance or other official specified for that purpose in the statute, or his/her successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Named Insured or any beneficiary hereunder arising out of this policy, and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**IN WITNESS WHEREOF**, the Company has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations by a duly authorized representative of the Company.

**Essex Insurance Company**

  
Secretary


  
President

**Evanston Insurance Company**

  
Secretary

  
President

**Markel Insurance Company**

  
Secretary

  
President

## **NUCLEAR ENERGY LIABILITY EXCLUSION (BROAD FORM)**

This exclusion modifies the provisions of this policy.

It is agreed that:

### **1. This policy does not apply:**

- A. Under any Liability Coverage, to bodily injury or property damage
  - (1) with respect to which an 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 or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the 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.
- B. Under any Medical Payments Coverage, or any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. Under any Liability Coverage, to bodily injury or 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, an Insured or (b) has been discharged or dispersed therefrom;
  - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or
  - (3) the bodily injury or 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 (3) applies only to property damage to such nuclear facility and any property thereat.

### **2. As used in this exclusion:**

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"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;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility within the definition of nuclear facility under paragraph (a) or (b) thereof;

"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 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 the 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 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;

"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;

"property damage" includes all forms of radioactive contamination of property.