

**EXCESS MARITIME EMPLOYERS' LIABILITY**

**INSURANCE POLICY NO. {Response}**

**I. DECLARATIONS**

**Item 1. Name(s) and Address(es) of Named Insured(s):**

{Response}.

**Item 2. Term of Insurance:**

**From:** {Response}.

**Until:** {Response}.

(Show Time/Day/Month/Year)

**Item 3. State(s) and Territories where Operations conducted:**

{Response}.

**Item 4. Description of Operations:**

{Response}

**Item 5. Combined Single Limit of Liability for all Expenses and Indemnity:**

{Response} **any one Accident or illness, including indemnity and expenses of investigation and defence, for claims arising out of your operations in accordance with the terms and conditions of Coverage B, including Maritime Coverage of the underlying Policy(ies)/Certificate(s) No(s).**

{Response}

**(or renewals or replacements thereof) issued to you by**

{Response}

**(hereinafter called "The Underlying Insurers").**

**Item 6. Premium:**

{Response}

{Res pons e}
{Res pons e}

Flat or

Minimum and Deposit

(Insert X in appropriate box)

**Item 7. Liability shall attach to the Underwriters only after the Underlying Insurers have paid or have been held liable to pay the full amount of their respective ultimate net loss liability as follows:**

**(a) As regards Coverage B (excluding Maritime Coverage):**

{Response} ultimate net loss in respect of each accident.

**(b) As regards Maritime Coverage only:**

{Response} ultimate net loss in respect of each person and subject to that same limit each person.

{Response} ultimate net loss in respect of each accident.

**(all hereinafter referred to as "The Underlying Limit or Limits") and the Underwriters shall then be liable to pay only such additional amount or amounts as will provide the Employer with a total coverage under the Policy/Policies/Certificate(s) of the Underlying Insurers and this Policy combined of:**

**(a) As regards Coverage B (excluding Maritime Coverage):**

{Response} ultimate net loss in respect of each accident.

**(b) As regards Maritime Coverage only:**

{Response} ultimate net loss in respect of each person and subject to that same limit each person.

{Response} ultimate net loss in respect of each accident.

## **II. COVERAGE**

- A. In consideration of the payment of the premium set out in Item 6 of the Declarations and in reliance upon the accuracy of the statements set forth in the application for this insurance which is appended hereto and incorporated herein by reference, We hereby agree, subject to the terms and conditions and the combined single limit, deductible and exclusions hereinafter mentioned, to pay all sums which You become legally obligated to pay, as employer, for compensatory damages under 46 U.S.C. §688 (the so-called "Jones Act") or the General Maritime Law of the United States, or for transportation, unearned wages, maintenance and cure and burial expenses, because of Bodily Injury by Accident or Bodily Injury by Disease, including wrongful death at any time resulting therefrom, sustained by any of your employees arising out of and in the course of their employment by You in either operations in the state(s) or territory(ies) designated in Item 3 of the Declarations or in operations necessary or incidental thereto.
- B. This insurance applies only in respect of bodily injuries sustained by any of your employees within the territorial limits of the United States of America and Canada, or over their Outer Continental Shelves or sustained by any of your employees who are citizens or residents of the United States of America and Canada while temporarily outside the territorial limits of the United States of America and Canada and arising out and in the course of their employment by You in connection with your operations in the state(s) or territory(ies) designated in Item 3 of the Declarations, but this insurance does not cover either defence or indemnity in respect of, or any award(s) made, in any suit or action brought against You in any court outside the territorial limits of the United States of America and Canada or in respect of any action on any such judgement, wherever brought against You.
- C. This insurance also applies to bodily injuries sustained by your employees outside the territorial combined single limits of the United States of America and Canada in (a) operations of vessels plying directly between ports thereof and (b) operations from any ports which are described in Item 4 of the Declarations.

## **III. EXCLUSIONS**

**This insurance does not apply to and there is no coverage under this insurance for either defence or indemnity in respect of:**

- A. Your liability for Bodily Injury by Accident or for Bodily Injury by Disease to the Officers and Crew of, and any of your employees on, any of your Owned and/or Operated Watercraft;

- B. Your liability arising from such of your operations in respect of which you have, under any Workers Compensation Law, other insurance or are a qualified self-insurer therefor;
- C. Any additional Insureds or any liabilities to third parties other than relatives of your employees in their capacity as such;
- D. Your liability assumed under any contract or agreement;
- E. Your liability for any fines, penalties, punitive damages, exemplary damages, or any additional damages resulting from the multiplication of compensatory damages, however described;
- F. Your liability arising out of, or in connection with Occupational Disease and/or diseases contracted by your employees in the course of employment and as a result of the nature of the work performed;
- G. Any obligation for which You or any carrier as your insurer may be liable under the Workers' Compensation Law or Occupational Disease law of a nation or state or territory designated in Item 3 of the Declarations; or under any other workers' compensation, unemployment compensation or disability benefits law; or under any similar law;
- H. Your liability in respect of any person or persons employed as a diver or diver's assistant, whether or not engaged in diving operations at the time of any accident or contraction of disease which, except for this exclusion, might constitute a basis for a claim hereunder;
- I. Your liability for which there is in force for You or for Your benefit a Protection and Indemnity insurance or similar insurance which would cover all or any part of such liability but for the presence therein of any "other insurance" clause, self insured retention or deductible clause, combined single limitation of liability clauses or similar clauses;
- J. Your liability to or the liability of any alternate employer of any of your employees unless We specifically agree in advance to endorsement of such to this insurance and you have agreed to payment of additional premium therefor;
- K. Your liability for any damages, transportation, unearned wages, maintenance, cure or burial expenses as a consequence of the contraction by any of your employees of any Occupational Disease;
- L. Your liability arising from any Accident occurring or illness or Disease contracted at any time outside the term of this insurance;
- M. Your liability arising solely from your discrimination against or humiliation of any of your employees.

#### **IV. CONDITIONS**

##### **1. PREMIUM**

When used as a premium basis "remuneration" means the entire remuneration earned during the term of this insurance by all your executive officers and other employees engaged in operations covered by this insurance.

You shall maintain records of the information necessary for premium computation, and shall send copies of such records to us at the end of the term of this insurance and at such other times during the term of this Insurance as We may direct.

If the premium stated in Item 6 of the Declarations is designated as minimum and deposits, then it is an estimated premium only, and upon termination of this insurance, the earned premium shall be computed in accordance with such terms, rates, premiums and minimum premiums as may be set forth in Item 6 of the Declarations of this insurance and all endorsements hereto. If the earned premium thus computed exceeds the minimum and a deposit premium previously paid, You shall pay to us the excess.

##### **2. INSPECTION AND AUDIT**

We shall be permitted, but not obligated, to inspect your property and operations at any time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on your behalf or for your benefit or others to determine or warrant that such property or operations are safe.

We may examine and audit your books and records at any time during the term of this insurance and any extensions hereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.

### **3. COMBINED SINGLE LIMIT OF LIABILITY AND DEDUCTIBLE**

The combined single limit of liability stated in Item 5 of the Declarations is the total combined single limit of liability, inclusive of your deductible as also stated in item 5 of the declarations, because of Bodily Injury by Accident, including death resulting therefrom, sustained by one or more of your employees as a result of any one Accident occurring during the term of this insurance.

The combined single limit of liability stated in Item 5 of the Declarations is the total combined single limit of our liability, because of Bodily Injury to Disease, inclusive of your deductible as also stated in Item 5 of the Declarations, including death resulting therefrom, contracted during the term of this insurance by one or more of your employees in operations in any one state or territory designated in Item 3 of the Declarations or in operations necessary or incidental thereto.

Inclusion of more than one of You under this insurance shall not operate to increase the combined single limit of liability stated in Item 5 of the Declarations.

We will not pay any indemnity and expenses of investigation and defence until the total of same exceeds the amount of your Underlying Limits as stated in Item 5 of the Declarations, and we will then pay such indemnity and expenses of investigation and defence as may be in excess of your Underlying Limits as stated in Item 5 of the Declarations but less than the amount of the combined single limit of liability also stated in Item 5 of the Declarations. It shall be a condition precedent to our undertaking of your defence as provided above that your Underlying Limits be exhausted.

In the event of claim or claims arising which appear likely to exceed the Underlying Limit or Limits, no costs shall be incurred by You without the written consent of the Underwriters.

Costs incurred by or on behalf of You with the written consent of the Underwriters, and for which You are not covered by the Underlying Insurers, shall be apportioned as follows:

- (i) Should any claim or claims become adjustable prior to the commencement of trial for not more than the Underlying Limit or Limits, then no Costs shall be payable by the Underwriters.
- (ii) Should, however, the amount for which the said claim or claims may be so adjustable exceed the Underlying Limit or Limits, then the Underwriters, if they consent to the proceedings continuing, shall contribute to the Costs incurred by or on behalf of You in ratio that their proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate net loss.
- (iii) In the event that You elect not to appeal a judgement in excess of the Underlying Limit or Limits, the Underwriters may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of Underwriters exceed their limits of liability as provided for herein, plus the expenses of such appeal.

### **4. DEFINITIONS**

#### **For the purposes of this insurance:**

- A. "Accident" shall mean and include an event within the term of this insurance, the occurrence of which (and not the result thereof) is neither expected nor intended from your viewpoint, but neither Assault nor Battery shall not be deemed an Accident if committed by or at your direction.
- B. "Bodily Injury by Accident" shall mean and include all physical injury by Accident to a human being employed by You, including death, sickness, disease or disability and all mental injury, anguish or shock to such human being resulting directly from such physical injury by Accident, and all mental injury, anguish or shock suffered by any relative of such employed human being directly resulting from such physical injury by Accident, it being expressly understood and agreed by You that the contraction of disease in and of itself is not an Accident within the meaning of the word "Accident" as defined first above or in the term "Bodily Injury by Accident".

"Bodily Injury by Disease" shall mean and include only such contractions of illness and disease as are not included within the definition above of "Bodily Injury by Accident".

- C. "Costs" shall mean and include only interest accruing after entry of judgement, investigation, adjustment and legal expenses (excluding, however, all Your office expenses, all expenses for Your salaried employees and general retainer fees You normally pay).
- D. "Non-Owned or Operated Watercraft or Vessel" shall mean any type of waterborne structure or vessel, whether or not capable of moving under its own power, which is not owned by, chartered by, loaned to, rented to or operated by or for You.
- E. "Owned and/or Operated Watercraft" shall mean any type of waterborne structure or vessel, whether or not capable of moving under its own power, which is owned by, chartered by, loaned to, rented to operated by or for You.
- F. "Occupational Disease" shall mean any injury, including death, sickness, disease or disability defined or classified as occupational disease by, in or under the authority of any workers' compensation, unemployment compensation or disability benefits, laws, statutes or regulations of any jurisdiction in which the condition was incurred, contracted or arose or in any jurisdiction in which suit or action on same is instituted or pending.
- G. "State" shall mean and include the District of Columbia and any state or territory of the United States of America.
- H. "Workers' Compensation Law" shall mean the workers' compensation law and any occupational disease law of any nation, state or territory designated in Item 3 of the Declarations.
- I. "We," "us" and "our" refer to the Insurer(s) subscribing to the insurance evidenced by this wording, be they natural or judicial persons and be they one or more.
- J. "You" and "Your" refer to, include and combined single limited to:
  - (i) The Named Insured(s) designated in Item 1 of the Declarations, and if designated therein as a partnership or joint venture, any partner or venturer thereof but only in respect of his or its liability as and arising from such.
  - (ii) Any officer, director, stockholder, partner or employee of the Named Insured(s), while acting in his capacity as such.

## **5. CROSS LIABILITY**

In the event of claims being made by reason of bodily injury suffered by any employee of one of You for which another is or may be liable, then this insurance shall cover any of You against whom such a claim is made or may be made in the same manner as if separate insurances had been issued to each of You, but this shall not operate to increase our combined single limit of liability as set forth in Item 5 of the Declarations.

## **6. NOTICE OF CLAIM OR SUIT**

When and if a claim is made or action, suit or other proceeding is brought against You, and when and if You have notice of any circumstances likely to result in a claim or action or suit, etc. for an amount in excess of the Underlying Limits, You shall immediately forward to us every demand, notice, summons, or other process received by you or your representative in respect thereof.

## **7. YOUR ASSISTANCE AND CO-OPERATION**

You shall co-operate with us and upon our request shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits proceedings.

## **8. ACTION AGAINST US**

No action shall be taken against us unless, as a condition precedent thereto, You shall have fully complied with all the requirements of this insurance, nor until the amount of your obligation to pay shall have been fully determined either by judgement against You after actual trial or by written agreement among the claimant, You and us.

## **9. SUBROGATION**

In the event of any payment under this insurance, then We shall be subrogated to all your rights of recovery therefor, and those of any person entitled to the benefits of this insurance, against any person or organisation, and You shall execute and deliver all such instruments and papers and do whatever else is necessary to secure to us such rights. You shall do nothing after loss to prejudice such rights.

## **10. CHANGES**

Notice to or knowledge possessed by any person shall not effect a waiver or change in any part of this insurance or to stop us from asserting any right under this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part hereof and signed by us.

## **11. ASSIGNMENT**

Assignment of interest under this insurance shall not bind us unless and until our consent is endorsed hereon.

## **12. CANCELLATION**

This insurance may be cancelled by You or by Us or by our respective representatives by sending by registered mail notice to the other party stating when, not less than thirty (30) days thereafter, cancellation shall be effective. Our mailing to You of notice as aforesaid at the address shown in Item 1 of the Declarations shall be sufficient proof of notice, and this insurance shall end on the effective date and hour of cancellation stated in said notice. Either your or our actual delivery of such written notice shall be equivalent to mailing.

We may cancel this insurance for reason of non-payment of premium to Us by sending by registered mail notice to You stating when, not less than ten (10) days thereafter, cancellation shall be effective. Our mailing to You of notice as aforesaid at the address shown in Item 1 of the Declarations shall be sufficient proof of notice, and this insurance shall end on the effective date and hour of cancellation stated in the said notice. Either you or our actual delivery of such written notice shall be equivalent to mailing.

If this insurance shall be cancelled by You, then We shall retain the customary short rate proportion of the premium for the period this insurance has been in force. If We cancel this insurance, then We shall retain the pro rata proportion of the premium for the period this insurance has been in force. Our notice of cancellation shall be effective even though We make no payment or return premium with such notice.

## **13. INSOLVENCY**

Neither your nor our insolvency, bankruptcy, receivership or refusal or inability to pay shall operate to increase our liability or any of our share of liability under this insurance.