



AMERICAN EQUITY SPECIALTY

INSURANCE COMPANY

Scottsdale, Arizona

THIS IS A "CLAIMS
MADE" POLICY.
READ YOUR POLICY
CAREFULLY.

**Architects, Engineers And Construction Managers
Professional Liability Insurance Policy
(Claims Made Basis)**

DECLARATIONS

Renewal of _____

Item 1. — **Named Insured:**

Item 2. — **Mailing Address:**

Item 3. — **Policy Period** From: _____ To: _____
(12:01 A.M. Standard Time at the address of the Named Insured as indicated herein.)

Item 4. — **Named Insured's Professional Services:**

Item 5. — **Named Insured is:** Individual Partnership Corporation Joint-Venture

Item 6. — **Limit of Liability and Deductible:**

The liability of the Company for "each claim" which is first made during the Policy period shall not exceed \$ _____

and, subject to that limit for each claim, the total of the Company's liability for all claims first made during the Policy period shall not exceed in the "aggregate" \$ _____

The limit of liability afforded under the Policy shall be subject to the deductible amount (set forth below) which shall be applicable to "each claim" and shall be inclusive of "costs, charges and expenses" \$ _____

Item 7. — **Total Premium** \$ _____

Item 8. — **Endorsements:**

Item 9. — **Except to such extent as may be provided otherwise herein, this insurance is limited to liability for only those claims that are first made against the Insured during the Policy period. Please see Insuring Agreements II, IV, V and VI and also please review this Policy carefully and discuss the coverage hereunder with your insurance agent, broker or representative.**

Countersigned

IMPORTANT NOTICE

The Limit of Liability available to pay judgments or settlements shall be reduced by the amounts incurred for loss adjustment expenses and legal defense and shall be inclusive of "costs, charges and expenses." Please further note that the amounts incurred for adjustment and defense shall be applied against the deductible (or retention amount). Please review this coverage with your insurance agent, broker or representative.

SPECIMEN

Duly Authorized Officer or Representative

ARCHITECTS, ENGINEERS AND CONSTRUCTION MANAGERS

PROFESSIONAL LIABILITY INSURANCE

(Claims Made Basis)

The Company designated on the Declarations Page

(A stock insurance company, herein called the Company)

In consideration of the payment of the premium, the undertaking of the Insured to pay the deductible as described herein, and in reliance upon the statements in the application attached hereto and made part hereof, and subject to the Limits of the Liability of this insurance as set forth in the Declarations and the Exclusions, Conditions and other terms of this Policy agrees with the Named Insured as follows:

INSURING AGREEMENTS

I. COVERAGE — PROFESSIONAL LIABILITY:

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as "Damages" by reason of liability arising out of any negligent act, error, mistake or omission in rendering or failing to render professional services of the type described in the Declarations whether committed or alleged to have been committed by the Insured or any person employed by the Insured or by others for whom the Insured is legally responsible.

II. TERRITORY, POLICY PERIOD AND CLAIMS MADE PROVISIONS:

This insurance applies only to negligent acts, errors, mistakes or omissions which are committed or alleged to have been committed and result in damage or alleged to have resulted in damage anywhere in the world, provided always that the negligent act, error, mistake or omission:

- (a) Was committed or alleged to have been committed during the Policy period and claim is first made or suit is brought for such claim during the Policy period;
- (b) Was committed or alleged to have been committed prior to the inception date of the Policy, and claim is first made during the Policy period, or if suit for such claim is commenced during the Policy period, provided:
 - (i) the Insured had no knowledge of any such actual or alleged negligent act, error, mistake or omission, on the effective date of this insurance, and
 - (ii) no other valid and collectible insurance is available to the Insured for any such actual negligent act, error, mistake or omission.

The Company's obligation as set forth above applies only to claims first made within the United States of America, its Territories or Possessions or Canada. The Company, however, may elect at any time to investigate, settle or defend such claims that are brought anywhere other than in the United States of America, its Territories or Possessions or Canada.

If the Company does not make such an election, then the Insured agrees with the written consent of the Company, to make or cause to be made such investigation and defense as is reasonably necessary, and subject to written authorization by the Company, the Insured may effect settlement. The Company in such event shall also reimburse the Insured for reasonable costs of such investigation, defense and settlement.

III. DEFINITIONS:

- (a) The word "Named Insured" shall mean:
 - (i) If the Named Insured is designated in the Declarations as an individual, the person so designated;
 - (ii) If the Named Insured is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
 - (iii) If the Named Insured is designated in the Declarations as a corporation, the corporation so designated and any officer or director thereof while acting within the scope of his duties as such;
 - (iv) If the Named Insured is designated in the Declarations as a joint venture, the joint venture so designated and any partner or member thereof, but only with respect to their liability as such;
 - (v) Any employee of the Insured while acting within the scope of his duties as such.
- (b) The unqualified word "claim" wherever used in this Policy means a demand received by the Insured for money or services, including the service of suit or institution of arbitration proceedings against the Insured.
- (c) The word "damages" shall mean: loss, judgments, settlements and "costs, charges and expenses", provided always that such subject of damages shall not include fines, penalties, punitive or exemplary damages, or the return, withdrawal or reduction of professional fees.
- (d) The term "Policy period" wherever used in this Policy shall mean: the period from the effective date of this Policy to the expiration date or earlier termination date, if any, of this Policy.

(e) The words "costs, charges and expenses" shall mean: legal expenses, excluding the cost of investigation and adjustment of claims by salaried employees of the Company, but including attorney's fees, arbitrator's fees, court costs, expenses incurred in obtaining expert testimony and the attendance of witnesses and costs incurred in connection with arbitration proceedings against the Named Insured; provided only those items of expense which can be directly allocated to a specific claim involving litigation or possible litigation shall be included.

IV. LIMITS OF LIABILITY:

The liability of the Company for each claim which is first made during the Policy period shall not exceed the amount stated in the Declarations for "each claim", and, subject to that limit for each claim, the total limit of the Company's liability for all claims which are first made during the Policy period, as covered hereunder, shall not exceed the amount stated in the Declarations as "aggregate". The inclusion herein of more than one Insured or the making of claims or the bringing of suits by more than one person or organization, shall not operate to increase the limit of the Company's liability for "each claim" and in the "aggregate".

The liability of the Company for "each claim" which is first made during the Policy period and the total of the Company's liability for all claims first made during the Policy period in the aggregate as set forth in the Declarations will apply to any sum or sums paid by the Company as "damages" inclusive of "costs, charges and expenses", whether or not loss payment is made, and the Company shall not be obligated to pay any claim or judgment or defend any suit or claim after the Company's liability has been exhausted by payment of judgments, settlements or "costs, charges and expenses".

Such limit of liability of the Company for "each claim" which is first made during the Policy period shall be subject to the deductible amount specified in the Declarations.

Two or more claims arising out of a single negligent act, error, mistake or omission shall be treated as a single claim. Each separate negligent act, error, mistake or omission shall be treated as a separate claim.

V. DEDUCTIBLE:

The deductible amount stated in the Declarations as applicable to "each claim" which is first made during the Policy period, will apply to any sum or sums paid by the Company as "damages" (inclusive of "costs, charges and expenses"), whether or not loss payment is made. The Named Insured agrees to pay to the Company that portion of the deductible which shall have been expended by the Company upon receipt of written notice of such sums being due.

If the Company pays any part or all of the deductible amount to effect settlement of any claim or suit, the Named Insured shall promptly reimburse the Company therefor as soon as written notice of such settlement has been conveyed to the Named Insured. However, either singly or combined, the total payments requested from the Named Insured in respect of each claim shall not exceed the deductible amount stated in the Declarations.

The determination by the Company as to the reasonableness of the "costs, charges and expenses" shall be conclusive on the Named Insured.

VI. AWARENESS PROVISION:

If during the Policy period, the Insured shall become aware of any circumstances which may subsequently give rise to a claim against the Insured by reason of any alleged or actual negligent act, error, mistake or omission for which coverage would be afforded hereunder and if the Insured shall during the Policy period herein give written notice to the Company of such circumstances, any claim which is made against the Insured arising out of such alleged or actual negligent act, error, mistake or omission shall be deemed for the purposes of this insurance to have been first made during the Policy period stated in the Declarations. The Insured shall cooperate fully with the Company as provided in Condition I, and any investigation conducted by the Company or its representatives shall be subject to the terms set forth in this Policy.

VII. DEFENSE, SETTLEMENT, INTEREST:

- (a) The Company shall defend any suit against the Insured seeking damages to which this insurance applies, even if any of the allegations of the suit are groundless, false or fraudulent and it is agreed that the Company may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the limit of the Company's liability has been exhausted by payment of judgments, settlements or "costs, charges and expenses".
- (b) The Company shall not settle any claim without the consent of the Insured. If, however, the Insured shall refuse to consent to any settlement recommended by the Company and shall elect to contest the

EXCLUSIONS

The Insuring Agreements and all other provisions of this insurance shall not apply to claims or "costs, charges and expenses" for or arising out of:

- (a) liability of others assumed by the Insured by agreement under any contract whether oral or in writing, unless such liability would have attached to the Insured even in the absence of such agreement. This exclusion shall not apply to the liability of others assumed by the Insured under a written contract but only to the extent such liability is enforceable under the laws of the governing jurisdiction and provided such liability of others results from any negligent act, error, mistake or omission of the Insured;
- (b) liability of any kind based upon, involving or arising out of the conduct by an individual, corporation, partnership or joint venture of which the Insured is a partner, officer, member or employee, which is not designated in the Declarations as a Named Insured or specifically endorsed hereon;
- (c) bodily injury, personal injury, sickness, disease or death to any employee of the Insured arising out of and in the course of his employment by the Insured; or any obligation for which the Insured or any carrier as his insurer may be liable under any Worker's Compensation, Unemployment Compensation, Employers Liability, Disability Benefits Law or under any similar law;
- (d) the insolvency or bankruptcy of any Insured, or of any other person, firm or organization;
- (e) the advising or requiring of, or failure to advise or require, or failure to maintain, procure or otherwise provide any form of insurance, suretyship or bond, either with respect to the Insured or any other person;
- (f) the ownership, rental, leasing, operation, maintenance, use or repair of any real or personal property, including property damage to property owned by, occupied by, rented or leased to the Insured;
- (g) the ownership, maintenance, operation or use, including loading and unloading, by or on behalf of the Insured, or at the direction of the Insured, of watercraft, automobiles, motor vehicles, aircraft or mobile vehicles of any kind;
- (h) express warranties or guarantees;
- (i) any loss caused intentionally by or at the direction of any Insured;
- (j) claims:
 - (i) by a business enterprise (or its subrogees or assignees) that wholly or partly owns, operates or manages the Named Insured or is wholly or partly owned, operated, or managed by the Named Insured, or any contractor or subcontractor thereof;
 - (ii) by an employee, his executor, administrator or next of kin (or his subrogees or assignees) of such business enterprises.

The coverage provided by this insurance Policy shall not apply to:

- (a) specification or installation of a product, material or process containing asbestos, or
- (b) the transportation, storage or disposal of a product or material containing asbestos, by or on behalf of the Insured.

It is further agreed that the coverage provided by this Policy shall not apply to

CONDITIONS

INSURED'S DUTIES IN THE EVENT OF CLAIM: It is a condition precedent to the application of all insurance afforded herein that the Insured shall:

- (a) Give written notice containing particulars sufficient to identify the Insured and claimant and full information with respect to the time, place and circumstances of the event complained of, and the names and addresses of the injured and of available witnesses, to the Company or to any of its authorized representatives as soon as practicable;
- (b) Immediately forward to the Company every demand, notice, summons or other process received by him or his representative, if claim is made or suit is brought against the Insured;
- (c) Cooperate with the Company and upon the Company's request, shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meetings with such representatives for the purpose of investigation and/or defense, and all without charge to the Company.

CANCELLATIONS:

This Policy may be cancelled by the Named Insured by surrender thereof to

claim or continue any legal proceedings in connection with such claim, then the Company's liability for the claim shall not exceed the amount for which the claim could have been settled plus "costs, charges and expenses" incurred up to the date of such refusal. Such amounts are subject to the provisions of Insuring Agreements IV and V.

In jurisdictions where the Company may be prevented by law or otherwise from carrying out this agreement, the Company shall pay any expense incurred with its written consent in accordance with this agreement.

The deductible amount stated in the Declarations as applicable to "each claim" which is first made during the Policy period will also apply to any sum or sums paid by the Company under paragraphs (a) and (b) above, whether or not loss payment is made.

any "claim" or "costs, charges and expenses" alleging or resulting in "personal injury" caused or alleged to have been caused, in whole or in part, by exposure to asbestos or a product, material or process containing asbestos.

Additional Definition:

"Personal Injury" means:

- (i) bodily injury, including sickness, disease, death, mental anguish and emotional distress;
- (ii) false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy;
- (iii) malicious prosecution;
- (iv) humiliation;
- (v) libel, slander, or other disparaging comments or materials in violation of an individual's right of privacy.

III. The coverage provided by this insurance Policy shall not apply to:

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants, such as solid, liquid, gaseous or thermal irritants or contaminants, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste (waste includes materials to be recycled, reconditioned or reclaimed); or
- (b) any governmental or regulatory directive or request that the Insured or anyone acting under its direction or control test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize said pollutants.

providing always that this exclusion shall not apply to any claim or "costs, charges and expenses" arising out of professional services described in the Declarations performed by the Insured in the planning and design of:

- (i) domestic sewage systems including those receiving industrial waste but only if such industrial waste is pre-treated in accordance with applicable governmental or regulatory standards, or
- (ii) potable water systems, or
- (iii) storm water systems, being water from rain, hail, snow or sleet, or
- (iv) electrical systems, or
- (v) heating, ventilating or air conditioning systems, except for systems designed solely for the control of "pollutants".

Additional Definitions:

"Pollutants" mean any solid, liquid gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

"Pollutants" does not mean heat, smoke, vapor, soot or fumes from a "hostile fire" or explosion.

"Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

These exclusions apply to any claim by whomever or whatsoever made, including, but not limited to, any public, private or governmental person, concern, body, entity, agent, office or corporation.

the Company or any of its authorized representatives or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company by mailing to the Named Insured at the address shown in the Declarations a written notice stating when, not less than thirty (30) days thereafter, such cancellation shall become effective. The time of the surrender or the effective date and hour of cancellation stated in the notice shall terminate the Policy period. The mailing of such notice as aforesaid, whether by ordinary mail or by certified mail, shall be sufficient proof of such notice. Delivery of such written notice, whether by the Named Insured or by the Company, shall be equivalent to mailing. If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter, but payment or tender of unearned premium is not a condition of cancellation by the Company.

A renewal quotation by the Company incorporating a different premium or limit of liability or deductible amount with respect to the coverage afforded by the Policy shall not be deemed to constitute a cancellation or refusal to renew by the Company.

III. SUBROGATION:

In the event of any claim under this Policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and 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 loss to prejudice such rights.

IV. AUDIT:

The Company may examine and audit the Insured's books and records at any time during the Policy period and extensions thereof and within three years after the final termination of this Policy, as far as they relate to the subject matter of this insurance.

V. ACTION AGAINST COMPANY:

No action shall be maintained against the Company by the Insured to recover for any loss under this insurance Policy unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms and conditions of this insurance Policy, nor until the amount of such loss has been fixed or rendered certain either by final judgment against the Insured after trial of the issues and the time to appeal therefrom has expired without an appeal having been taken, or, if an appeal has been taken, then until after the appeal has been determined or by agreement between the parties with the written consent of the Company. In no event shall any action be maintained against the Company by the Insured or any other persons unless brought within twelve months after the right of action accrues hereon.

Nothing contained in this Policy shall give any person or organization any right to join the Company as a defendant or co-defendant or other party in any action against the Insured to determine the Insured's liability.

VI. OTHER INSURANCE:

This insurance shall be excess insurance over any other valid and collectible insurance available to the Insured.

VII. ASSIGNMENT:

This Policy shall be void if assigned or transferred without the written consent of the Company. However, if the Insured shall die or be judged incompetent, this Policy shall cover the Insured's legal representative as the Insured with respect to liability previously incurred and covered by this Policy.

VIII. APPLICATION:

By acceptance of this Policy, all Insureds agree that the statements in the application are their agreements, representations and warranties, that this Policy is issued in reliance upon the truth thereof, and that this Policy embodies all agreements existing between themselves and the Company or any of its representatives relating to this insurance.

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


President


Secretary

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

I. This Policy shall not apply:

Under any Liability Coverage, to injury sickness, disease, death or destruction

- (a) with respect to which an Insured under the 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
- (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) 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.

II. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

- (a) the nuclear material (1) is at any nuclear facility owned by or operated by, or on behalf of, an Insured or (2) has been discharged or dispersed therefrom;
- (b) 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
- (c) the injury, sickness, disease, death, or destruction 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 (c) applies only to injury to or destruction of property at such nuclear facility.

III. As used in this Policy:

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

IX. NOTICE OF CLAIM:

The Insured, upon notice of any claim or of an incident or circumstance likely to give rise to a claim hereunder, shall give immediate written advice thereof to the Company, c/o Professional Underwriters Agency, Inc., 2907 Butterfield Road, Suite 320, Oak Brook, Illinois 60521.

X. FALSE OR FRAUDULENT CLAIMS:

If the Insured shall proffer any claims knowing same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all insurance hereunder shall be forfeited.

XI. CHANGES:

Notice to any agent or representative or knowledge possessed by any agent, representative or other person acting on behalf of the Company shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of the Policy, nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

XII. SERVICE OF SUIT CLAUSE:

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 Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States.

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 Messrs. Wilson, Elser, Moskowitz, Edelman & Dicker, 150 East 42nd Street, New York, New York 10017-5630, Attention: Stephen M. Marcellino, Esq., 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. Messrs. Wilson, Elser, Moskowitz, Edelman & Dicker are authorized and directed to accept service of process on behalf of the Company in any such suit and/or upon the request of the Insured, to give a written undertaking to the Insured that they will enter a general appearance on the Company's behalf in the event such a suit shall be instituted.

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 officer specified for that purpose in the statute, or his successor or successors in office, as their 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 Insured or any beneficiary hereunder arising out of this policy of insurance, and hereby designates the aforementioned Stephen M. Marcellino, Esq. as the person to whom the said officer is authorized to nail such process or a true copy thereof.

"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 included 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.

With respect to injury to or destruction of property, the word "injury" or