



**WILLIAMSON COUNTY  
PROFESSIONAL SERVICES AGREEMENT  
FOR MEDICAL SERVICES AT THE WILLIAMSON COUNTY JAIL**

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This Agreement ("Agreement") is entered into between Williamson County, Texas, hereinafter referred to as COUNTY, and Adam Barta, M.D., hereinafter referred to as PROVIDER, for the purpose of providing medical services for the inmates of the Williamson County Jail, hereinafter referred to as JAIL, which the Commissioners Court finds serves a public purpose and serves the public welfare of the citizens of Williamson County.

**I.  
SCOPE OF SERVICES**

PROVIDER shall provide medical services as a physician licensed to practice medicine in the State of Texas for the inmates of the JAIL. All services by PROVIDER shall be performed according to the regularly accepted standards of medical care in the State of Texas.

PROVIDER shall have a duty to immediately notify COUNTY of any complaint, investigation, or adverse action taken against PROVIDER concerning his license to practice medicine in the State of Texas.

PROVIDER shall be physically present in the JAIL infirmary to provide medical services for up to 12 hours per week for 37 weeks. PROVIDER will schedule these hours subject to the reasonable requests of the COUNTY through its jail staff or other authorized representative. PROVIDER shall have a duty to notify COUNTY through its jail staff in writing of any times when PROVIDER will not be available to provide medical services and will assist COUNTY in locating a suitable substitute. COUNTY shall be able to accept or reject such proposed substitute at its sole discretion and PROVIDER remains obligated to provide services under this Agreement until an acceptable substitute is available.

PROVIDER will provide out-patient medical attention to all inmates requiring such attention. These medical services shall include, but are not limited to, follow-up on all

lab tests, radiographs, and all inmates who have had medical attention outside of the jail infirmary.

PROVIDER will be under no obligation to provide inpatient care, hospitalization, or specialty medical services which are beyond PROVIDER's expertise. However, PROVIDER shall immediately inform COUNTY through its jail staff in writing of the need for inpatient care, hospitalization, or specialty medical services in the treatment of any inmate.

PROVIDER will provide consultation to the Lead Paramedic of the Williamson County Jail Infirmary and other jail staff on all questions of out-patient medical care.

PROVIDER will develop and write standing orders for use by the jail staff in the handling of the medical needs of the inmates.

PROVIDER will be available for phone consultation by jail staff at any time unless PROVIDER has followed the notice requirement and substitute physician procedure outlined above for any periods when PROVIDER will not be available for phone consultation.

## II. TERM

This Agreement shall become effective as of December 30, 2011 and continue thereafter until September 30, 2012. Either party may terminate this Agreement at any time for any reason (or without cause) on sixty days prior written notice to the other party. In the event that COUNTY and PROVIDER wish to extend this Agreement for additional one (1) year terms following the initial term, the parties shall execute a written agreement evidencing each party's desire to extend the Agreement.

## III. COST

COUNTY agrees to pay PROVIDER and PROVIDER agrees to accept the total sum of \$6,833.00 each month for the services described under "SCOPE OF SERVICES." This monthly amount may be modified by agreement of the parties at the beginning of each subsequent fiscal year of the COUNTY.

Any violation of the provisions of this Agreement by PROVIDER shall be grounds for withholding payment by the COUNTY until the violation is resolved to the satisfaction of the COUNTY.

Any travel costs associated with services provided herein is to be handled separately from this Agreement, and must be approved in writing by the Sheriff or his designated Chief or Assistant Chief Deputy prior to PROVIDER incurring travel costs if such costs are requested to be reimbursed by COUNTY.

IV.  
CONFIDENTIALITY

All information regarding PROVIDER's work under this Agreement shall be held in strictest confidence unless pre-approved in writing by COUNTY. PROVIDER agrees to read and follow the COUNTY's "HIPAA PRIVACY COMPLIANCE MANUAL FOR TEXAS COUNTIES" regarding the use of inmate medical information.

V.  
AGENCY-INDEPENDENT CONTRACTOR

Neither the COUNTY nor any employee thereof is an agent of PROVIDER and neither PROVIDER nor any employee thereof is an agent of the COUNTY. This agreement does not and shall not be construed to entitle either party or any of their respective employees, if applicable, to any benefit, privilege, or other amenities of employment by the other party.

VI.  
DUTY TO REPRESENT/INDEMNITY/INSURANCE

COUNTY agrees to provide legal representation and indemnify, to the extent allowed by Texas law, PROVIDER in the event of legal action taken against PROVIDER on the basis of the medical services provided to the inmates of the JAIL in the performance of this Agreement. COUNTY shall have full authority to defend, negotiate, or settle any such claims at the sole discretion of the COUNTY. PROVIDER shall fully assist and participate, without cost to COUNTY, in the defense, negotiation, or settlement of any such claims, and such assistance and participation shall include consultation with COUNTY and opinion testimony as needed on medical questions and issues. Provider shall also furnish, without cost to COUNTY, consultation and opinion testimony on medical questions and/or issues for legal actions against COUNTY or COUNTY's officials related to medical services provided to inmates on claims and/or suits that do not include PROVIDER as a named defendant. COUNTY reserves the right to withdraw its representation and indemnification of PROVIDER in the event PROVIDER fails to assist and participate in the defense, negotiation, or settlement of any such claims.

COUNTY may fulfill its legal representation and indemnification obligations, to the extent allowed by law, under this Agreement through insurance or other means at its sole discretion.

During the term of this Agreement, COUNTY hereby agrees to provide the policy of insurance attached hereto as Exhibit "A" (said exhibit provides the coverage limits of the Policy) and PROVIDER acknowledges and agrees that such policy and coverage limits is sufficient and adequate. In the event that COUNTY and/or PROVIDER are sued for the services provided under this Agreement and counsel is provided through the said insurance policy, COUNTY shall not be required to provide counsel for PROVIDER in

addition to the counsel that is provided under the insurance policy. Furthermore, COUNTY shall have no obligation to provide legal representation or indemnify PROVIDER for any legal action which does not arise from PROVIDER's services under this Agreement or to any extent that is not allowed by law.

In the event COUNTY or PROVIDER should terminate the Policy attached hereto in Exhibit "A" by reason of nonrenewal or cancellation, COUNTY shall pay an additional premium equal to 200% of the annual premium for the Policy Period to extend the coverage granted under the Policy for an additional twenty four (24) months to begin immediately upon the effective date of such nonrenewal or cancellation, as further described in the Policy Declarations and as further described in the Extended Reporting Period provision of the terms and conditions of the enclosed Policy. COUNTY and PROVIDER shall comply with all terms and conditions relating to the Extended Reporting Period of the Policy.

#### VII. ASSIGNMENT; SUCCESSORS AND ASSIGNS

Neither party may assign, in whole or in part, any interest it may have in this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

#### VIII. THIRD PARTY BENEFICIARY EXCLUDED

No person not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary. This Agreement may not be interpreted to waive the sovereign immunity of any party to this Agreement to the extent such party may have immunity under Texas law.

#### IX. FORCE MAJEURE

If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

X.  
TERMINATION

This Agreement may be terminated, with or without cause, by either party by providing written notice to the other party at least sixty (60) days prior to the intended date of termination.

XI.  
NOTICE

Any notice or other writing required by this Agreement shall be deemed given when personally delivered or mailed by certified or registered United States mail, postage prepaid, addressed as follows:

COUNTY: Williamson County Judge  
Dan A. Gattis (or successor)  
710 Main Street, Ste. 101  
Georgetown, Texas 78626

with copy to: Williamson County Sheriff  
James Wilson (or successor)  
508 Rock Street  
Georgetown, Texas 78626

PROVIDER: Adam Barta, M.D.  
4004 Sierra Dr.  
Austin, TX 78731

XII.  
SEVERABILITY

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

XIII.  
VENUE AND GOVERNING LAW

Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

XIV.  
NO WAIVER OF IMMUNITIES

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to COUNTY, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. COUNTY does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

XV.  
COUNTY'S RIGHT TO AUDIT

PROVIDER agrees that COUNTY or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of PROVIDER which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. PROVIDER agrees that COUNTY shall have access during normal working hours to all necessary PROVIDER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. COUNTY shall give PROVIDER reasonable advance notice of intended audits.

XVI.  
APPROPRIATION OF FUNDS

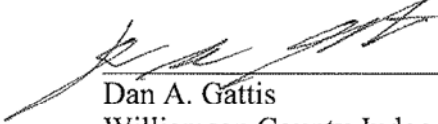
COUNTY believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. PROVIDER understands and agrees that the COUNTY's payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

XVII.  
ENTIRE AGREEMENT

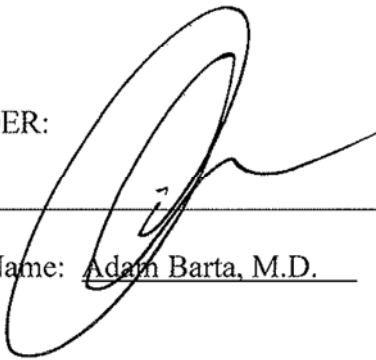
This Agreement represents the entire understanding of and between the parties and supersedes all prior representations. This Agreement may not be varied orally, but must be amended by written document of subsequent date duly executed by these parties.

Executed this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, to be effective as of the 30<sup>th</sup> day of December, 2012.

WILLIAMSON COUNTY, TEXAS

  
\_\_\_\_\_  
Dan A. Gattis                      12-20-11  
Williamson County Judge

PROVIDER:

By:  \_\_\_\_\_

Printed Name: Adam Barta, M.D.

**EXHIBIT "A"**

**INSURANCE POLICY AND COVERAGE LIMITS**



Extraco Insurance  
PO Box 6101 Temple, TX 76503  
1-866-398-7226/ Fax 254-774-5916

Insurer:

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EVANSTON INSURANCE COMPANY

[A stock insurance company, herein called the Company, which except in Illinois is a non-admitted insurer, writing pursuant to the surplus lines laws and not under the jurisdiction of the Insurance Commissioner.]



# EVANSTON INSURANCE COMPANY

## Endorsement

Named Insured:  
ADAM BARTA, M.D.

Attached to and forming  
a part of Policy No.: MM-821088  
Endorsement No.: 5  
Effective Date of Endorsement: October 1, 2011

### DECREASE OF LIMITS OF LIABILITY (use with MM-20000)

In consideration of the return premium of \$1250.00 and the letter dated October 17, 2011, signed by Adam Barta, MD, a copy of which is attached and is to be considered as incorporated in and constituting part of this policy, it is hereby understood and agreed that the policy is amended as follows:

1. Item 6. of the Declarations, Coverage and Limits of Liability, is deleted and replaced with the following:

#### 6. COVERAGE AND LIMITS OF LIABILITY:

COVERAGE A.: (a) Each Claim, Each Insured: \$ 500,000

(b) Aggregate For All Claims, Each Insured: \$ 1,500,000

COVERAGE B.: (c) Each Claim, Each Insured: \$ not purchased

(d) Aggregate For All Claims, Each Insured: \$ not purchased

#### COVERAGE A. OR COVERAGE B. OR BOTH COMBINED:

(e) Single Per Patient Claim, All Insureds: \$ 500,000

#### COVERAGE A. AND COVERAGE B. POLICY LIMIT:

(f) Subject to the limits above, the Total Aggregate  
Limit of Liability for the Policy Period, including  
the Extended Reporting Period, for All Claims,  
All Insureds: \$ 1,500,000

#### SUPPLEMENTARY PAYMENTS:

(g) Trial Attendance Supplementary Payments: \$ 250.00 per diem



## EVANSTON INSURANCE COMPANY

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### Endorsement

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2. The Limits of Liability stated in Item 1. above shall apply only to Claims first made against the Insured on or after the effective date of this endorsement and such limits shall be part of and not in addition to the Limits of Liability stated in the Declarations.
3. In the event of the purchase of the Extended Reporting Period, the Limits of Liability stated in Item 1. above shall apply.

TAX: \$60.63 RP STAMPING FEE: \$0.75 RP

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All other provisions of the policy shall apply and remain unchanged.

  
Authorized Representative



# EVANSTON INSURANCE COMPANY

Policy No. MM-821088  
Prev. No. MM-819816  
Prod. No. 10582

## DECLARATIONS - PHYSICIANS, SURGEONS, DENTISTS AND PODIATRISTS PROFESSIONAL LIABILITY INSURANCE

Claims Made Policy: This policy is limited to liability for only those CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, if exercised. Please review the policy carefully.

1. **NAMED INSURED:**

(a) Coverage A.: Individual Liability Coverage: ADAM BARTA, M.D.

(b) Coverage B.: Association, Corporation or Partnership Liability Coverage: not purchased

2. **BUSINESS ADDRESS OF THE INSURED:**

508 S. ROCK ST.  
GEORGETOWN, TX 78626

3. **PROFESSIONAL SPECIALTY OF THE INSURED:**

Family medicine at Williamson County Jails

4. **POLICY PERIOD:** From October 1, 2011 to October 1, 2012

12:01 A.M. Standard Time at address of Insured stated above.

5. **RETROACTIVE DATE:** December 28, 2010

6. **COVERAGE AND LIMITS OF LIABILITY:**

COVERAGE A.: (a) Each Claim, Each Insured: \$ 1,000,000

(b) Aggregate For All Claims, Each Insured: \$ 3,000,000

COVERAGE B.: (c) Each Claim, Each Insured: not purchased

(d) Aggregate For All Claims, Each Insured: not purchased

COVERAGE A. OR COVERAGE B. OR BOTH COMBINED:

(e) Single Per Patient Claim, All Insureds: \$ 1,000,000

COVERAGE A. AND COVERAGE B. POLICY LIMIT:

(f) Subject to the limits above, the Total Aggregate Limit of Liability for the Policy Period, including the Extended Reporting Period, for All Claims, All Insureds: \$ 3,000,000

SUPPLEMENTARY PAYMENTS:

(g) Trial Attendance Supplementary Payments: \$ 250.00 per diem

7. **DEDUCTIBLE:**

COVERAGE A. and B.:

(a) Applicable to each claim, including claim expenses: \$ 10,000

SUPPLEMENTARY PAYMENTS:

(b) \$ none

- POLICY FEE \$300.00 TAX  
\$620.80 STAMPING FEE  
\$7.68 POLICY FEE FULLY  
EARNED UPON ISSUANCE OF POLICY
- Policy No. MM-821088
8. PREMIUM FOR POLICY PERIOD: \$ 12,500.00
9. EXTENDED REPORTING PERIOD:  
12 months at 150% of the full annual premium; 24 months for 200% of the full annual premium; or 36 months at 250% of the full annual premium
10. The Insured is not a proprietor, superintendent, executive officer, director, partner, or trustee of any hospital, sanitarium, clinic with bed-and-board facilities, laboratory, or any business enterprise and not named in Item 1 hereinabove, except as follows:  
None
11. ENDORSEMENTS ATTACHED AT POLICY INCEPTION:
1. EIC 4115-01 25% Minimum Earned Premium Endorsement
  2. MEIL 5229 09 10 Longer Duration Extended Reporting Period Availability
  3. MPIL 1010 05 10 Texas Surplus Lines Notice
  4. MPIL 1009 04 10 Texas Important Notice

12. NOTICES:

Notices required to be provided to the Company under this policy shall be addressed to:

CLAIM OR DISCOVERY CLAUSE NOTICES:

Claims Service Center  
MARKEL SERVICE, INCORPORATED  
Ten Parkway North  
Deerfield, Illinois 60015

Fax: (847) 572-6338  
E-mail: newclaims@markelcorp.com  
Phone: (847) 572-6000

ALL OTHER NOTICES:

MARKEL MID SOUTH  
7500 Dallas Parkway, Suite 400  
Plano, TX 75024

Fax: (866) 730-3615  
Phone: (866) 681-6691 (469) 241-3400

  
Authorized Representative

**Markel's Designed Protection®  
Risk Management Resource Physicians,  
Surgeons, Dentists and Podiatrists**

Welcome to Markel's Designed Protection® leading edge Risk Management Resource.

The following risk management resource is available exclusively to our policyholders at our website [www.markelshand.com](http://www.markelshand.com) at *no additional cost*.

**Available Risk Management Resource:**

- **Designed Protection® Risk Management Telephone Hotline for Physicians, Surgeons, Dentists and Podiatrists**

This confidential telephone hotline is staffed by healthcare professional defense attorneys that are available to answer general risk management questions.

**HOW TO QUICKLY ACCESS RISK MANAGEMENT RESOURCES:**

- Step 1. Go onto our website, [www.markelshand.com](http://www.markelshand.com).
- Step 2. On the home page banner menu, hover over "Policyholders" and click on "Risk Management" to get to the Login screen.
- Step 3. Enter your current policy number and click below to access. Your policy number is MM-821088.

If you need technical assistance during the log in process, call (866) 932-2433.



## EVANSTON INSURANCE COMPANY

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### Endorsement

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Named Insured:  
ADAM BARTA, M.D.

Attached to and forming  
a part of Policy No.: MM-821088  
Endorsement No.: 1  
Effective Date of Endorsement: October 1, 2011

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#### 25% MINIMUM EARNED PREMIUM ENDORSEMENT

In consideration of the premium paid, it is hereby understood and agreed that in the event that this policy is cancelled by the Named Insured, the policy premium is subject to a minimum earned premium of twenty-five percent (25%) of the total premium.

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All other provisions of the policy shall apply and remain unchanged.

A handwritten signature in cursive script, appearing to read "Gerald Albanese", is written over a horizontal line.  
Authorized Representative



INTERLINE  
POLICY NUMBER: MM-821088

## EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### LONGER DURATION EXTENDED REPORTING PERIOD AVAILABILITY

This endorsement modifies Insurance provided under the following:

PHYSICIANS, SURGEONS, DENTISTS AND PODIATRISTS PROFESSIONAL LIABILITY INSURANCE POLICY  
SPECIFIED MEDICAL PROFESSIONS PROFESSIONAL LIABILITY INSURANCE POLICY  
SPECIFIED MEDICAL PROFESSIONS PROFESSIONAL LIABILITY COVERAGE PART - CLAIMS MADE COVERAGE  
SPECIFIED MEDICAL PROFESSIONS GENERAL LIABILITY (INCLUDING PRODUCTS AND COMPLETED  
OPERATIONS LIABILITY) INSURANCE COVERAGE PART - CLAIMS MADE COVERAGE  
LOCUM TENENS AND CONTRACT STAFFING PROFESSIONAL LIABILITY INSURANCE  
LOCUM TENENS AND CONTRACT STAFFING GENERAL LIABILITY (INCLUDING PRODUCTS AND COMPLETED  
OPERATIONS LIABILITY) CLAIMS MADE COVERAGE

In consideration of the premium paid, it is hereby understood and agreed that in addition to the availability of the Extended Reporting Period for the period of months stated in Item 9. of the Declarations, an Extended Reporting Period of the following duration shall also be available:

48 months;  
60 months;  
72 months; or  
84 months.

The Named Insured must make a written request for the longer duration Extended Reporting Period received by the Company within 10 days after the end of the Policy Period. The written request must specify from the options stated above which period of Extended Reporting Period is requested. The Company will determine the additional premium to be charged for such Extended Reporting Period.

The Company will provide to the Named Insured in writing the amount of the additional premium for an Extended Reporting Period of the duration specified within 10 days of receipt of the Named Insured's written request.

All other terms and conditions of the Section Extended Reporting Period shall apply with regard to the Named Insured's exercise of any such longer duration Extended Reporting Period.

All other terms and conditions remain the same.





## **EVANSTON INSURANCE COMPANY**

### **IMPORTANT POLICYHOLDER NOTICE**

#### **TEXAS SURPLUS LINES NOTICE**

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a 4.85% (percent) tax on gross premium.



## TEXAS IMPORTANT NOTICE

### IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the company's toll-free telephone number for information or to make a complaint at

**1-800-507-7626**

You may write to the Insurance company at:

Markel Legal Department  
Ten Parkway North  
Deerfield, Illinois 60015

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

**1-800-252-3439**

You may write the Texas Department of Insurance at:

Texas Department of Insurance  
Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
FAX # (512) 475-1771

Web: <http://www.tdi.state.tx.us>

E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

**PREMIUM OR CLAIM DISPUTES:** Should you have a dispute concerning your premium or about a claim, you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**ATTACH THIS NOTICE TO YOUR POLICY:** This notice is for information only and does not become a part or condition of the attached document.

Prescribed by the State Board of Insurance  
Effective May 1, 1992

### AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de la compania para informacion o para someter una queja al:

**1-800-507-7626**

Usted puede escribir a la compania de seguros:

Markel Legal Department  
Ten Parkway North  
Deerfield, Illinois 60015

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas

Texas Department of Insurance  
Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
FAX # (512) 475-1771

Web: <http://www.tdi.state.tx.us>

E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

**DISPUTAS SOBRE PRIMAS O RECLAMOS:** Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el Departamento de Seguros de Texas.

**UNA ESTE AVISO A SU POLIZA:** Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

Ordenado por el consejo Estatal de Directores de Seguros, Efectivo el 1 de Mayo 1992

## Physicians, Surgeons, Dentists and Podiatrists Professional Liability Insurance Policy

THIS IS A CLAIMS MADE POLICY. PLEASE READ IT CAREFULLY.

In consideration of the payment of the premium, the undertaking of the Coverage A. Named Insured authorized to act on behalf of all Insureds to pay the deductible as described herein and in the amount stated in the Declarations, in reliance upon the statements in the application attached hereto and made a part hereof, and subject to the limits of liability shown in the Declarations, and subject to all the terms of this insurance, the Company agrees with the Coverage A. Named Insured and the Coverage B. Named Insured as follows:

### THE INSURED

The unqualified word "Insured," either in the singular or plural, means:

- A. under Coverage A. Individual Professional Liability, the Coverage A. Insured which means:
  - 1. the Coverage A. Named Insured which is herein defined as each individual stated in Item 1.(a) of the Declarations;
  - 2. any Locum Tenens physician, surgeon, dentist or podiatrist utilized by the Coverage A. Named Insured but only to continue the practice on behalf of the Coverage A. Named Insured in his absence;
  - 3. any Employee or Volunteer Worker of the Coverage A. Named Insured, but only while acting within the scope of that person's duties on behalf of the Coverage A. Named Insured;
  - 4. the heirs, executors, administrators, assigns and legal representatives of each Insured in Items A.1.-3. above in the event of his death, incapacity or bankruptcy.
- B. under Coverage B. Association, Corporation or Partnership Liability, the Coverage B. Insured which means:
  - 1. the Coverage B. Named Insured which is herein defined as the association, corporation or partnership if any is stated in Item 1.(b) of the Declarations;
  - 2. any member, stockholder or partner of the Coverage B. Named Insured with respect to Malpractice of others, provided that no member, stockholder or partner shall be an Insured under this paragraph B. with respect to liability for his personal acts of a professional nature;
  - 3. any Employee or Volunteer Worker of the Coverage B. Named Insured, but only while acting within the scope of that person's duties on behalf of the Coverage B. Named Insured;
  - 4. the heirs, executors, administrators, assigns and legal representatives of each Insured in Items B.1.-3. above in the event of his death, incapacity or bankruptcy.

### INSURING AGREEMENTS

- A. **Professional Liability and Claims Made Clause:** The Company shall pay on behalf of the Insured all sums in excess of the Deductible amount stated in Item 7. of the Declarations, which the Insured shall become legally obligated to pay as Damages as a result of Claims first made against the Insured during the Policy Period or during the Extended Reporting Period, if exercised, and reported to the Company pursuant to Section Claims A., Claim Reporting Provision:
  - 1. under Coverage A. Individual Professional Liability: because of Malpractice or Personal Injury, sustained by a patient and committed by the Coverage A. Named Insured, or by any person for whose Malpractice or Personal Injury the Coverage A. Named Insured is legally responsible, except as a member, stockholder or partner of an association, corporation, or partnership, arising out of the professional activities of the Insured as a medical, podiatric, or dental practitioner;
  - 2. under Coverage B. Association, Corporation or Partnership Liability: because of Malpractice or Personal Injury, sustained by a patient and committed by any person for whom the

Coverage B. Named Insured is legally responsible, arising out of the practice of medicine, podiatry or dentistry;

Provided:

- a. that such Malpractice or Personal Injury happens during the Policy Period or on or after the Retroactive Date stated in Item 5. of the Declarations and before the end of the Policy Period.
- b. prior to the effective date of this policy the Insured had no knowledge of such Malpractice or Personal Injury or any fact, circumstance, situation or incident which may lead a reasonable person in that Insured's position to conclude that a Claim was likely.

### **SUPPLEMENTARY PAYMENTS**

- A. **Trial Attendance Supplementary Payments:** The Company shall pay a per diem trial attendance allowance to any Coverage A. Named Insured physician, surgeon, dentist or podiatrist who attends the trial, mediation or arbitration of a Claim; but only if (a) the Claim is against the Coverage A. Named Insured physician, surgeon, dentist or podiatrist; and (b) the Claim is covered by this policy; and (c) the Coverage A. Named Insured physician, surgeon, dentist or podiatrist attends the trial, mediation or arbitration at the written request of the Company.

Payments to the Coverage A. Named Insured pursuant to this Section shall be in addition to the Limits of Liability applicable to Coverages A. and B. and shall not be subject to the Deductible.

### **DEFINITIONS**

- A. **Claim** means a demand received by the Insured for monetary damages or services and shall include the service of suit or institution of arbitration proceedings against the Insured.
- B. **Claim Expenses** means reasonable and necessary amounts incurred by the Company or by the Insured with the prior written consent of the Company 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; provided, however, Claim Expenses shall not include: (1) salary, wages, overhead, or benefit expenses of or associated with employees or officials of the Coverage A. Named Insured or the Coverage B. 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 Coverage A. Named Insured or the Coverage B. Named Insured or the Company.
- C. **Damages** means the monetary portion of any judgment, award or settlement; provided, however, Damages shall not include: (1) punitive or exemplary damages or any multiplied portions of damages in excess of actual damages, including trebling of damages; (2) taxes, criminal or civil fines, or attorneys' fees of a party other than an Insured 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 return, withdrawal, reduction or restitution or payment of fees, profits or charges for services or consideration and/or any expenses paid to the Insured.
- D. **Employee** means any natural person other than (1) an insured physician, Locum Tenens, dentist, podiatrist, psychologist, nurse midwife, nurse anesthetist, anesthesiologist assistant, nurse practitioner, physician's assistant, surgeon's assistant, perfusionist, optometrist; or (2) any person licensed, certified or otherwise authorized to deliver advanced level health care in the absence of direct supervision by a licensed physician, surgeon, dentist or podiatrist; but only while acting within the scope of that person's duties on behalf of the Coverage A. Named Insured or the Coverage B. Named Insured.
- E. **Good Samaritan Act** means emergency health care, emergency medical care, or emergency treatment provided to a patient without compensation or expectation of compensation at the scene of any emergency; and only if provided by a Coverage A. Named Insured other than a Locum Tenens.
- F. **Locum Tenens** means a temporary, substitute physician, surgeon, dentist or podiatrist who has been designated to provide professional services as a replacement of a Coverage A. Named Insured.

- G. **Malpractice** means an act, error or omission: (1) in professional services rendered or that should have been rendered; (2) in rendering a Good Samaritan Act; or (3) in services rendered by a Coverage A. Named Insured as a member of a formal accreditation or similar professional board or committee of a hospital at which he/she is a staff member.
- H. **Personal Injury** means, whenever used in this policy:
  - 1. any physical or mental injury to or death of any patient;
  - 2. false arrest, detention, or imprisonment, and malicious prosecution or humiliation except when inflicted by, at the direction of, or with the consent or acquiescence of the Insured who has predetermined to commit such act, or allowed such act to have been committed, without legal justification;
  - 3. the publication or utterance of a libel or slander or a publication or an utterance in violation of a patient's right to professional confidence, except when published or uttered by, at the direction of, or with the consent or acquiescence of the Insured who has predetermined to commit such act, or allowed such act to have been committed, without legal justification.
- I. **Policy Period** means the period from the inception date of this policy to the policy expiration date as stated in Item 4. of the Declarations, or the effective date of any earlier cancellation or termination.
- J. **Volunteer Worker** means any person who is not an Employee of the Coverage A. Named Insured or the Coverage B. Named Insured and who donates his/her work at the direction of and within the scope of duties determined by the Coverage A. Named Insured or the Coverage B. Named Insured and is not paid a fee, salary or other compensation by the Coverage A. Named Insured or the Coverage B. Named Insured or by anyone else for such work performed for the Coverage A. Named Insured or the Coverage B. Named Insured.

## THE EXCLUSIONS

This policy does not apply to:

- A. any Malpractice or Personal Injury committed in violation of any law or ordinance; to any Claim based upon or arising out of any dishonest, fraudulent, criminal, malicious, knowingly, wrongful, deliberate, or intentional acts, errors or omissions committed by or at the direction of the Insured;
- B. any Malpractice or Personal Injury that happens while the Insured's license or certificate to practice the Insured's profession is suspended, surrendered, revoked, expired, terminated, or otherwise not in effect;
- C. any Malpractice or Personal Injury that involves professional services that are outside the scope of the Insured's practice as stated in Item 3. of the Declarations; however, this exclusion will not apply to a Good Samaritan Act that is otherwise covered by this policy;
- D. any Claim based upon or arising out of the invasion of privacy, or the infringement or interference with the right of privacy resulting from the use, visitation of, posting or browsing of any bulletin board services, website or URL location;
- E. any Claim based upon or arising out of the gathering, use or dissemination of personal information in any form including but not limited to any violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- F. any Claim based upon or arising out of discrimination by the Insured on the basis of race, creed, age, sex, sexual preference, physical handicap or national origin;
- G. any Claim based upon or arising out of any act, error or omission committed or alleged to have been committed by the Insured that in any manner relates to or arises out of the actual, alleged or threatened discharge, dispersal, release, escape or existence of pollutants, hazardous substances, toxic substances or substances which in any manner impair or allegedly impair the environment or which result in bodily injury or property damage;
- H. any liability arising out of the Insured's activities in his capacity as proprietor, superintendent, executive officer, director, partner or trustee of any hospital, sanitarium, clinic with bed-and-board

facilities, laboratory or any business enterprise not named as an Insured under this policy unless such activities are disclosed in the application and listed in Item 10. of the Declarations;

- I. any liability of others assumed by the Insured under any contract or agreement, unless such liability would have attached to the Insured even in the absence of such contract or agreement;
- J. any Claim arising out of general liability, or goods or products manufactured, sold, handled or distributed by the Insured or by others trading under an Insured's name;
- K. any liability arising out of the ownership, maintenance, operation, use, loading or unloading of any vehicle, watercraft or aircraft;
- L. any Claim based upon or arising out of: (1) the use of excessive influence or power on any patient; or (2) any actions intended to lead to or culminate in any sexual acts. However, the Company does agree to defend any such Claim, subject to the applicable limits of liability, until a final judgment has been determined; however, if judgment is rendered against the Coverage A. Named Insured, the Coverage A. Named Insured, upon written demand by the Company, agrees to reimburse the Company for all Claim Expenses incurred in the defense of such Claim, within ten (10) days;
- M. any Claim which is based upon or arises out of professional services rendered while an Insured was under the influence of alcohol, narcotics, hallucinogenic agents or which involves any other allegation of substance abuse; however, the Company does agree to defend any such Claim, subject to the applicable limits of liability, until a final judgment has been determined; however, if judgment is rendered against the Coverage A. Named Insured, the Coverage A. Named Insured, upon written demand by the Company, agrees to reimburse the Company for all Claim Expenses incurred in the defense of such Claim, within ten (10) days;
- N. any obligation for which the Insured or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- O. any Claim based upon or arising out of any employment dispute, or to Personal Injury to, or sickness, disease or death of any employee of the Insured arising out of, and in the course of his employment by the Insured;
- P. use, administration or prescription of any drug, pharmaceutical, medical device or procedure which has not received final approval by the U. S. Food and Drug Administration (FDA) for treatment of human beings or which is not used, administered or prescribed as part of an FDA approved study;
- Q. any Claim based upon or arising out of a warranty or guarantee of cure or success of treatment which is alleged to have arisen out of advertisement;
- R. any Claim based upon or arising out of any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) and its amendments or any regulation or order issued pursuant thereto or any similar federal, state or local law; or
- S. any Claim based upon or arising out of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C., Section 1961, et seq.

## **TERRITORY**

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

## **LIMITS OF LIABILITY**

- A. **Coverage A. Limit of Liability-Each Claim:** The total liability of the Company under Coverage A. for the combined total of Damages and Claim Expenses for each Claim first made against each Coverage A. Insured during the Policy Period or the Extended Reporting Period, if exercised, shall not exceed the Coverage A. Limit of Liability stated in Item 6.(a) of the Declarations.
- B. **Coverage A. Limit of Liability-Aggregate:** Subject to the above Limits of Liability A., the total liability of the Company under Coverage A. shall not exceed the Coverage A. Aggregate Limit of Liability stated in Item 6.(b) of the Declarations for the combined total of Damages and Claim

Expenses arising out of all Claims first made against each Coverage A. Insured during the Policy Period and the Extended Reporting Period, if exercised.

- C. **Coverage B. Limit of Liability-Each Claim:** The liability of the Company under Coverage B. for the combined total of Damages and Claim Expenses for each Claim first made against each Coverage B. Insured during the Policy Period or the Extended Reporting Period, if exercised, shall not exceed the amount stated in Item 6.(c) of the Declarations.
- D. **Coverage B. Limit of Liability-Aggregate:** Subject to the liability of the Company for each Claim against each Coverage B. Insured, the total liability of the Company under Coverage B. shall not exceed the Coverage B. Aggregate Limit of Liability stated in Item 6(d) of the Declarations for the combined total of Damages and Claim Expenses arising out of all Claims first made against each Coverage B. Insured during the Policy Period and the Extended Reporting Period, if exercised.
- E. **Coverage A., Coverage B. & Both Combined:** Subject to A., B., C., and D. above, one or more Claims made against two or more Insureds under Coverage A. or Coverage B. or both combined arising out of Malpractice or Personal Injury sustained by one patient shall be a single patient Claim to which the limit of liability for "Single Per Patient Claim" shall apply to all Insureds. The total liability of the Company shall not exceed the limit applicable to "Single Per Patient Claim" as stated in Item 6.(e) of the Declarations regardless of the number of Insureds against whom Claim is made by or on behalf of one patient. All such Claims, whenever made, shall be deemed to be first made on the date on which the earliest Claim arising out of such Malpractice or Personal Injury is made or with regard to notice given to and accepted by the Company pursuant to Section Claims B., Discovery Clause, on the date within the Policy Period on which such notice of potential Claim is first received by the Company and all such Claims shall be subject to the same "Single Per Patient Claim" limit of liability.
- F. **Policy Limit:** Subject to A., B., C., D. and E. above, the total liability of the Company under Coverage A. and Coverage B. shall not exceed the Coverage A. and Coverage B. Policy Limit stated in Item 6.(f) of the Declarations for the combined total of Damages and Claim Expenses for all Claims first made against all Insureds during the Policy Period and the Extended Reporting Period, if exercised.
- G. **Trial Attendance Supplementary Payments:** The Company will pay a per diem trial allowance of two hundred fifty dollars (\$250) per day to any Coverage A. Named Insured pursuant to the terms stated in Section Supplementary Payments A.
- H. **Deductible:**
1. **Coverages A. and B.:** The deductible amount stated in Item 7. of the Declarations shall be paid by the Coverage A. Named Insured and shall be applicable to each Claim and shall include Damages and Claim Expenses, whether or not Damages payments are made.  
  
Such amounts shall, upon written demand by the Company, be paid by the Coverage A. Named Insured within thirty (30) days. The total payments requested from the Coverage A. Named Insured in respect of each Claim shall not exceed the deductible amount stated in Item 7. of the Declarations.  
  
The determination of the Company as to the reasonableness of the Claim Expenses shall be conclusive on the Insured.
  2. **Supplementary Payments:** No deductible will apply to the coverage afforded under Section Supplementary Payments A.
- I. **Apportionment of Losses Against Aggregate Limits:** All sums which the Company pays on behalf of a Coverage B. Insured and one or more Coverage A. Insureds as the result of a Claim or as the result of a notice given to the Company pursuant to Section Claims B., Discovery Clause, shall be apportioned against the Coverage B. Limit of Liability and the Coverage A. Limit of Liability and the respective apportioned amounts shall thereby reduce (1) each aggregate limit of liability applicable under Coverage B. and (2) each aggregate limit of liability applicable under Coverage A. Nothing stated herein shall operate to increase any limit of liability of the Company as stated in Item 6. of the Declarations. Such sums shall be apportioned among the Insureds under this policy as follows:



1. In the event notice is given to the Company pursuant to the Section Claims B., Discovery Clause, or if a Claim is settled or withdrawn prior to judgment, award or verdict, or if a judgment, award or verdict is rendered generally and without regard to the relative culpability of those against whom it is rendered, the Damages and Claim Expenses shall be apportioned, in equal shares against (a) the remaining aggregate limits of liability available under Coverage B. and (b) the remaining aggregate limits of liability available under Coverage A. to each Coverage A. Insured against whom such Claim has been made individually, until each applicable aggregate limit of liability has been exhausted.
2. In the event that subparagraph 1. does not apply and judgment, award or verdict is rendered, the Damages and Claim Expenses shall be apportioned, in such shares as those shares relate to the judgment, award or verdict in the manner of its rendition against each Insured against (a) the remaining aggregate limits of liability available under Coverage B. and (b) the remaining aggregate limits of liability available under Coverage A. to each Coverage A. Insured against whom such judgment, award or verdict has been rendered individually, until each applicable aggregate limit of liability has been exhausted.

**J. Multiple Insureds, Claims and Claimants:**

1. The inclusion herein of more than one Insured or one Insured in multiple capacities or the making of Claims or the bringing of suits by more than one person or organization shall not operate to increase any liability of the Company. Two or more Claims arising out of a single Malpractice or Personal Injury or a series of related Malpractices or Personal Injuries shall be considered a single Claim. All such Claims, whenever made, shall be deemed to be first made on the date on which the earliest Claim arising out of such Malpractice or Personal Injury is made or with regard to notice given to and accepted by the Company pursuant to Section Claims B., Discovery Clause, on the date within the Policy Period on which such notice of potential Claim is first received by the Company.
2. Subject to Sections Limits of Liability A., B., C., D., E. and F. above, and regardless of the number of Claims made, or the number of claimants or the number of Insureds hereunder, two or more Claims made during the Policy Period including any Extended Reporting Period, if exercised, against any one Insured arising out of injuries sustained by any one patient or person as a result of Malpractice or Personal Injury shall constitute a single Claim and the liability of the Company shall not exceed the amount stated in Item 6.(e) of the Declarations.
3. Subject to sections Limits of Liability A., B., C., D., E. and F. above, and regardless of the number of Claims made, or the number of claimants or the number of Insureds hereunder, if one or more Claims are first made during the Policy Period, including any Extended Reporting Period, if exercised, against two or more Insureds arising out of injuries sustained by one patient or person as a result of Malpractice or Personal Injury shall constitute a single Claim and the liability of the Company shall not exceed the amount stated in Item 6.(e) of the Declarations.
4. In the event that a Claim is first made during the Policy Period, including any Extended Reporting Period, if exercised, against an individual in both capacities as described in Coverage A. and Coverage B., a single limit of liability shall apply and, in the event that the Coverage A. and Coverage B. Each Claim, Each Insured limits are not of equal amounts, that limit shall be the greater of the amount stated in Item 6.(a) or 6.(c) of the Declarations.

**DEFENSE, SETTLEMENTS AND CLAIM EXPENSES**

- A. Defense and Investigation:** 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 provisions:
1. Claim Expenses incurred in defending and investigating such Claim shall be a part of and shall not be in addition to the applicable Limits of Liability stated in Item 6. of the Declarations. Such Claim Expenses shall reduce the Limits of Liability and shall 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 applicable Limits of Liability stated in Item 6. of the Declarations have been exhausted by payment(s) of Damages and/or Claim Expenses.



2. The Company shall select defense counsel; provided, however, that if the law of the state of the 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:

- (a) 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;
- (b) providing any other reasonable information requested;
- (c) fully itemized billing on a periodic basis; and
- (d) 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 a part of and shall not be in addition to the applicable Limits of Liability stated in Item 6. of the Declarations. Such Claim Expenses shall reduce the Limits of Liability and shall be applied against the Deductible.

- B. **Consent to Settlement:** The Company shall not settle any Claim without the consent of the applicable Coverage A. Named Insured(s). If the Insured is an association, corporation or partnership, the written consent of an Insured who was formerly but is no longer a member, stockholder, or partner of the Coverage B. Named Insured will not be required, provided the written consent of the first Coverage A Named Insured named in Item 1. of the Declarations has been obtained. If, however, the Insured shall refuse to consent to any settlement recommended by the Company and shall elect to contest the 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 so settled including Claim Expenses incurred up to the date of such refusal. Such amounts are subject to the provisions of Section Limits of Liability.

## CLAIMS

- A. **Claim Reporting Provision:** The Insured shall give to the Company written notice as stated in Item 12. of the Declarations as soon as practicable of any Claim first made against the Insured during the Policy Period or the Extended Reporting Period, if exercised.

In the event suit is brought against the Insured, the Insured shall immediately forward to Market Service, Incorporated, on behalf of the Company, every demand, notice, summons or other process received by him/her or by his/her representatives.

- B. **Discovery Clause:** If during the Policy Period, the Insured first becomes aware of a specific act, error or omission in Professional Services which may result in a Claim within the scope of coverage of this policy, then the Insured may provide written notice as stated in Item 12. 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 act, error or omission in Professional Services shall be deemed for the purpose of this insurance to have been 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 Discovery Clause that written notice be given to the Company containing the following information:

- 1. the description of the specific act, error or omission;
- 2. the date on which such act, error or omission took place;
- 3. the injury or damage which has or may result from such act, error or omission;
- 4. the identity of any injured persons; and
- 5. the circumstances by which the Insured first became aware of such act, error or omission.

Subject to the paragraphs hereinabove, if during the Policy Period the Insured provides such written notice of a specific act, error or omission 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 act, error or omission. Such matter shall be subject to all terms, conditions and provisions in this policy as applicable to a Claim.

- C. **Assistance and Cooperation of the Insured:** 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; (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; (5) provide any information required to comply with federal or state reporting regulations; all without cost to the Company. 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, except at his/her own cost, make any payment, admit any liability, settle any Claims, assume any obligation or incur any expense without the written consent of the Company.
- D. **False or Fraudulent Claims:** If any Insured shall commit fraud in proffering any Claim, this insurance shall become void as to such Insured from the date such fraudulent Claim is proffered.

#### **EXTENDED REPORTING PERIOD**

- A. In the event of the termination of this insurance by reason of nonrenewal or cancellation by the Coverage A. Named Insured authorized to act on behalf of all Insureds or if the Company shall cancel coverage or terminate it by refusing to renew, for reasons other than the nonpayment of premium and/or deductible or non-compliance with the terms and conditions of this policy, then the Coverage A. Named Insured authorized to act on behalf of all Insureds shall have the right upon payment of an additional premium calculated at the percentage stated in Item 9. of the Declarations of the annual premium for the Policy Period to extend the coverage granted under this policy for the period of months stated in Item 9. of the Declarations, as elected by the Coverage A. Named Insured, to apply to Claims first made against the Insured during the period of months as elected, and reported to the Company pursuant to Section Claims A., Claim Reporting Provision, following immediately upon the effective date of such cancellation or nonrenewal, for any Malpractice or Personal Injury committed on or after the Retroactive Date stated in Item 5. of the Declarations and prior to the effective date of such cancellation or nonrenewal and which is otherwise covered by this policy. This extended period of coverage as elected by the Coverage A. Named Insured and described in this paragraph shall be referred to in this policy as the Extended Reporting Period.

If however, this insurance is succeeded within thirty (30) days by CLAIMS MADE insurance coverage on which the Retroactive Date is the same as or earlier than that shown in Item 5. of the Declarations of this policy, the succeeding insurance shall be deemed to be a renewal hereof, and in consequence the Coverage A. Named Insured authorized to act on behalf of all Insureds shall have no right to secure an Extended Reporting Period.

The quotation of a different premium and/or deductible and/or limit of liability for renewal does not constitute a cancellation or refusal to renew for the purpose of this provision.

This Extended Reporting Period shall not be available when any Insured's license or right to practice his/her profession is revoked, suspended or surrendered.

- B. As a condition precedent to the Coverage A. Named Insured's right to purchase the Extended Reporting Period, the Coverage A. Named Insured authorized to act on behalf of all Insureds must have paid: (1) all Deductibles when due; (2) all premiums due for the Policy Period; and (3) all premium and deductible(s), if any, due on any other policy(ies) issued by the Company or any of its affiliated companies in an uninterrupted series of policies for which this policy is a renewal or replacement. The right to purchase the Extended Reporting Period shall terminate unless a written request for the Extended Reporting Period is received by the Company within thirty (30) days after the effective date of cancellation or nonrenewal together with full payment for the Extended Reporting Period. If such written request and premium payment for the Extended Reporting Period are not so

received by the Company, there shall be no right to purchase the Extended Reporting Period at a later date.

- C. In the event of the purchase of the Extended Reporting Period the entire premium therefor shall be fully earned at its commencement.
- D. The Extended Reporting Period shall not in any way increase the Limits of Liability stated in Item 6. of the Declarations.

#### **OTHER CONDITIONS**

- A. **Cancellation:** This policy may be cancelled by the Coverage A. Named Insured authorized to act on behalf of all Insureds by surrender thereof to the Company or to its underwriting manager, on behalf of the Company, at Ten Parkway North, Deerfield, Illinois 60015 or by mailing to the aforementioned written notice stating when thereafter such cancellation shall be effective. If cancelled by the Coverage A. Named Insured, the Company shall retain the customary short rate proportion of the premium.

This policy may be cancelled by the Company or by its underwriting manager, by mailing to the Coverage A. Named Insured authorized to act on behalf of all Insureds at the address stated in the Declarations written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. However, if the Company cancels the policy because the Coverage A. Named Insured authorized to act on behalf of all Insureds has failed to pay a premium or deductible when due, including premium and deductible(s) due on any other policy(ies) issued by the Company or any of its affiliated companies in an uninterrupted series of policies for which this policy is a renewal or replacement, this policy may be cancelled by the Company by mailing a written notice of cancellation to the Coverage A. 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. Delivery of such written notice by the Coverage A. 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. **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.
- C. **Entire Agreement:** This policy, the Declarations, the application(s) and any written endorsements attached hereto shall be deemed to be a single unitary contract.
- D. **Other Insurance:** This insurance shall be in excess of the Deductible stated in Item 7. 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 a specific excess insurance over the Limits of Liability provided in this policy.
- E. **Changes:** Notice to any agent 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 the 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.
- F. **Assignment of Interest:** Assignment of interest under this policy shall not bind the Company unless its consent is endorsed hereon.
- G. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to the right 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. Notwithstanding the foregoing, however, the Company reserves the right to exercise any rights of subrogation against an Insured in respect of any Claim brought about or contributed to by an intentional, willful, dishonest, fraudulent act or omission of such Insured or by an act or omission of such Insured that constitutes a willful violation of any statute or regulation.

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 claims expenses payment by any excess carrier on behalf of the Insured; fourth, for any damages and claim expenses payment by any primary carrier on behalf of the Insured; and, last, for repayment of the Insured's Deductible.

- H. **Inspection and Audit:** The Company shall be permitted but not obligated to inspect the Insured's operations at any time. Neither the Company's right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such operations are safe or healthful, or are in compliance with any law, rule or regulation.

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

- I. **Action Against the Company:** No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all of 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 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 Coverage A. Named Insured named in Item 1. of the Declarations shall act on behalf of all Insureds with respect to the giving and receiving of all notices to and from the Company as provided herein: the exercising of the Extended Reporting Period; the consent to settlement of a Claim brought exclusively under Coverage B., if purchased; the cancellation of this policy in whole or part; the payment of premiums and Deductibles when due; 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.

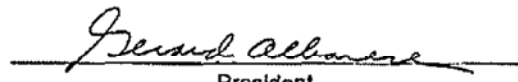
- K. **Service of Suit:** Except with respect to any policy issued in any state in which the Company is licensed as an admitted insurer to transact business, it is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Coverage A. Named Insured authorized to act on behalf of all Insureds, 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 Coverage A. Named Insured or the Coverage B. 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 page by a duly authorized representative of the Company.

  
Secretary

  
President

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

This endorsement 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 endorsement:**

"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.