

SECTION 15 UMBRELLA LIABILITY

Definitions

The following definitions apply to the words or terms listed below wherever they appear in this section unless specifically otherwise indicated:

1 Damage

damage shall mean

loss of or damage to tangible property, conversion, trespass, nuisance or wrongful interference with the enjoyment of rights over tangible property.

2 Injury

injury shall mean

death of or injury to or illness, disease, false imprisonment or arrest of or to any person.

3 Malice

malice shall mean

malicious legal proceedings, malicious falsehood, defamation, unfair competition or infringement of copyright, title, slogan or idea.

4 Negligent advice

negligent advice shall mean

incorrect or inadequate advice given in the promotion of the insured's products, but without expectation of any other reward.

5 Product

product shall mean

any article after it has left the custody or control of the insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the insured.

6 Territorial limits

territorial limits shall mean

anywhere in the world but not in respect of any demand, claim, judgement, award or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).

7 Underlying insurance

underlying insurance shall mean

cover in force under those sections listed in the schedule under the heading "Underlying insurance sections".

Defined events

Subject to the provisions of sub-sections A, B and C (Basis of indemnification) - damages, costs, fees and expenses which the insured shall become legally liable to pay consequent upon

1 Damage

2 Injury

3 Malice

4 Negligent advice

which occur in the course of or in connection with the business within the territorial limits.

Limits of indemnity

The amount payable, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants and all other costs and expenses incurred with the company's consent

1 in respect of

1.1 claims arising out of or in connection with

- 1.1.1 products
 - 1.1.2 negligent advice
 - 1.1.3 liability consequent upon injury or damage occurring after the completion and handing over of any work and caused by or through or in connection with any defect or error in or omission from such work
- 1.2 claims under sub-section C (Additional risks protection)
for any one event or series of events with one original cause or source or in the aggregate during any (annual) period of insurance (being the period of twelve consecutive months from the inception date or anniversary date)
- 2 in respect of all other claims for any one event or series of events with one original cause or source (subject always to proviso 1 of sub-section A (Excess layer protection))
- shall not exceed the limit of indemnity stated in the schedule

Basis of indemnification

Subject to the defined events, limits of indemnity, specific conditions and exceptions of this section as well as the general exceptions, conditions and provisions of this policy, the indemnity provided by this section is restricted to those circumstances defined under sub-sections A, B and C hereunder:

Sub-section A - Excess layer protection

This sub-section provides indemnity in accordance with the defined events of this section in excess of the limit of indemnity of the underlying insurance provided that:

- 1 the cover provided by this sub-section is subject to the same terms, exceptions and conditions as the underlying insurance and where such insurance states that generally or in respect of specified claims the limit of indemnity is the aggregate of all indemnifiable claims occurring or made during the (annual) period of such underlying insurance, then the limit of indemnity under this section is declared to be on an identical basis as such underlying insurance;
- 2 the claim is covered by the underlying insurance and is not met in full solely because of the inadequacy of the limit of indemnity of such underlying insurance;
- 3 where the limit of indemnity of the underlying insurance has been reduced by reason of previous claims, this sub-section shall provide indemnity in excess of such reduced limit of indemnity;
- 4 where the limit of indemnity of the underlying insurance has been exhausted by reason of previous claims, the company will interpret this section as if such underlying insurance is still in force and this sub-section shall provide indemnity in excess of the excess (if any) of such underlying insurance;
- 5 unless specifically agreed to by the company under this section, any decision by the company to accept a claim on an "ex gratia" or "without prejudice" basis in terms of the underlying insurance shall not be covered under this sub-section.

Sub-section B - Difference in conditions

This sub-section provides indemnity in accordance with the defined events of this section for claims covered by the defined events of the underlying insurance but excluded by a subsequent policy term, exception or condition of such underlying insurance provided that:

- 1 where the limit of indemnity of the underlying insurance has been exhausted solely by reason of previous claims, the company will interpret this sub-section as if such underlying insurance's defined events and related terms, exceptions and conditions are still in force;
- 2 where the underlying insurance is on a claims made basis, any policy term, exception or condition on the underlying insurance relating to when a claim is made or reported or must be made or reported shall also apply to this sub-section;
- 3 if a claim is rejected under the underlying insurance on the basis of an exception relating to the inefficacy or failure to conform to specification of a product and such underlying insurance is on a losses occurring basis and the circumstances of the claim is such that the insured and the company cannot mutually agree when the loss occurred, then the company will deal with the claim on the basis that the loss occurred when the claimant first notified the insured of a circumstance or an event which subsequently gave rise to an indemnifiable claim;
- 4 this sub-section will also provide indemnity where a claim is not covered by the wording of the defined events of the underlying insurance solely on the grounds that:

- 4.1 the injury or damage was not accidental by nature or did not arise out of an accident (still subject to specific exception 4 (Deliberate failure) of the specific exceptions applicable to sub-sections A, B & C);
- 4.2 any temporary loss of use of property or reduction in value of property did not constitute damage within the said defined events.

Sub-section C - Additional risks protection

This sub-section provides indemnity in accordance with the defined events of this section, other than for claims which are indemnifiable in whole or part by sub-sections A or B of this section or which are the subject of indemnity by any other policy provided that:

- 1 the indemnity granted by this sub-section is limited to claims made against the insured during the period of insurance of this section, or events or circumstances notified by the insured to the company during such period which subsequently give rise to claims being made;
- 2 this sub-section will not provide indemnity where the company declines to grant indemnity in terms of the underlying insurance in respect of a claim on the grounds that the event did not occur or the claim was not made during the policy period (as the case may be).

Specific conditions

1 Business liquidated

Cover under this section shall cease if the insured's business is wound up or carried on by a liquidator or judicial manager or is permanently discontinued, except with the written agreement of the company;

2 Disputes

Any dispute between the insured and the company in connection with or arising out of this section shall be decided exclusively in accordance with the law of the country in which this policy is issued and exclusively by a competent court of the High Court of that country.

The insured undertakes that they will not institute action against the company nor bring joint proceedings against the company in the court of any country other than in the country in which this policy is issued;

3 Other insurances

If, at the time of any event giving rise to a claim under this section, indemnity for such event is also provided under any other insurance (other than a policy to specifically provide indemnity in excess of this section), the indemnity provided by this section shall be in excess of, and shall not contribute with, such other insurance.

Insurance specifically to provide indemnity in excess of this section is permitted without prejudice to this insurance and the existence of such specific excess insurance shall not reduce the company's liability under this Section.

4 Underlying insurance

The indemnity granted by this section is conditional upon the underlying insurance remaining in force throughout the period of insurance and that the limits of indemnity in terms of the underlying insurance shall not be less than those reflected under the heading "Minimum underlying insurance limits of indemnity" contained in the schedule. If, at the date of loss, the limit of indemnity in terms of the underlying insurance is less than the said minimum limits, then the insured shall be considered as being their own insurer for the difference.

Specific exceptions applicable to sub-sections A, B and C

The company will not indemnify the insured in respect of

1 Carriage of passengers for hire or reward

any liability arising out of the carriage of passengers for hire or reward or the carriage of fare paying passengers;

2 Compulsory motor vehicle insurance

so much of any compensation or claim as falls within the scope of any compulsory motor vehicle insurance enactment.

This exception shall apply notwithstanding that no insurance under such enactment is in force or has been effected and regardless of whether or not the applicable legislative fund is incapable of providing or unable to provide compensation;

3 Defined events prior to retroactive date

any defined event which occurs prior to the retroactive date which is applicable to the underlying insurance;

4 Deliberate failure

any liability arising out of any deliberate or intentional failure of the insured or the insured's management to take reasonable precautions to prevent injury, damage, defamation or negligent advice;

5 Electronic data

any liability for damage including detrimental change and any consequence therefrom to any electronic data;

6 Events known to the insured

any liability arising out of any circumstance or event known to the insured:

6.1 which is not reported to the company in terms of any claims reporting requirement or condition contained in the general section of this policy

6.2 prior to inception of this section;

7 Fines and penalties

finer, penalties, punitive, exemplary or vindictive damages;

8 Hazardous substances

any liability if the transport of hazardous substances was not in compliance with chapter VIII of the National Road Traffic Act 1996 (Act 93 of 1996) (as amended);

9 Hunting or game viewing

any liability consequent upon injury or damage directly or indirectly caused by or in connection with or arising from or attributable to hunting or game viewing activities

10 Spread of fire

any liability arising out of the spread of fire from the insured's premises to sugar cane, plantations or forests;

11 Workmen's compensation

any benefits for which the Insured is liable under any relevant workmen's compensation, unemployment compensation or disability benefits law and/or similar law and/or scheme;

Specific exceptions applicable to sub-sections B and C only

The company will not indemnify the insured in respect of

1 Excess

the excess. The insured shall be responsible for the excess as stated in the schedule in respect of any one claim or any number of claims other than for injury arising from all events of a series consequent upon or attributable to any one source or original cause;

2 Gradually operating cause

any liability for injury of or to employees caused by or contributed to by a gradually operating cause or by prolonged exposure to substances, factors or circumstances which do not arise from a sudden and identifiable accident or event;

3 Motor vehicle

any liability caused by or through or in connection with the ownership, possession, operation or use by or on behalf of the Insured of any motor vehicle or trailer;

4 Non-standard policy exception

any liability for any circumstance, not being a standard policy exception that has been specifically excluded under the underlying insurance by the company for the particular insured.

5 Optional extensions

losses excluded by an exception on the underlying insurance where such cover is available by an optional extension, examples including but not limited to products liability and defective workmanship liability. Where cover under such optional extension has however been taken, indemnity for losses excluded by an exception to such optional extension will be provided for in terms of sub-section B;

6 Ownership of aircraft, watercraft or hovercraft

any liability caused by or through or in connection with the ownership, possession, operation or use by or on behalf of the insured of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15,25 metres in length and then only whilst on inland waterways) but this exception shall not apply to liability for injury of or to employees of the insured arising out of such employment;

7 Performance warranties

any liability arising out of performance warranties or guarantees or clauses stipulating liquidated damages or penalties, except to the extent that it is proved that such liability would have existed in the absence of such contractual provision;

8 Pollution

8.1 any liability directly or indirectly caused by seepage, pollution or contamination, provided always that this exception shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended and unforeseen occurrence and provided that such sudden, unintended and unforeseen occurrence is not the natural consequence of the operation or existence of the business

8.2 the cost of removing, nullifying or cleaning up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unforeseen occurrence and provided that such sudden, unintended and unforeseen occurrence is not the natural consequence of the operation or existence of the business

This exception shall not extend this section to cover any liability which would not have been insured under this section in the absence of this exception;

9 Products recall

any costs or liability arising out of the recall of any product (including containers and labels) or part thereof;

10 Professional advice

acts, errors or omissions of the directors or officers of the insured when acting in their capacity as such or in the provision by the insured of professional services which shall include giving advice, any action taken or work done by the insured when carrying on their functions in any capacity involving special skill or knowledge in their calling or the failure to discharge any obligations pursuant thereto. This exception does not apply to negligent advice as defined in the defined events of this section;

11 Property owned, leased or hired

damage to property owned, leased or hired by or under hire purchase or on loan to the insured or otherwise in the insured's care, custody or control other than premises (or the contents thereof) temporarily occupied by the insured for work therein or other property temporarily in the insured's possession for work thereon (but no indemnity is granted for damage to the property on which the insured is working and which arises out of such work).

12 Repair of aircraft

any liability caused by or through or in connection with the repair, maintenance, refuelling or defueling of any aircraft, watercraft or hovercraft undertaken by or on behalf of the insured as a revenue producing activity but this exception shall not apply to liability for injury of or to employees of the insured arising out of such employment;

13 Repair or replacement of product

any costs necessary to repair, replace, recondition or modify any product (including containers and labels) or part thereof and/or for the loss of use of any product or part thereof;

14 Restatement of general exception

losses excluded by any exception on the underlying insurance that restates a general exception, an example being but not limited to the restated general exception relating to war, riot and terrorism;

15 Sexual abuse assault harassment or molestation

any claims arising out of sexual abuse assault harassment or molestation including unwelcome sexual advances, requests for sexual favours and any unwelcome verbal, visual or physical contact of a sexual nature;

16 Unfair labour practice

any liability for any unfair labour practice including but not limited to unfair dismissal within the meaning of the Labour Relations Act No. 66 of 1995 as amended, or any Act passed in substitution thereof;

17 United States of America or Canada

injury or damage happening in the United States of America or Canada caused by or through or in connection with any product, if such product has, to the insured's knowledge, been exported to the United States of America or Canada by or on behalf of the insured or such sale or resale should reasonably be contemplated by the insured;

Clauses, extensions and limitations

1 Additional insured extension

The business description of the insured as reflected in the schedule shall include any organisation or functions operated by the insured for the benefit of the insured's employees or visitors (including but not limited to any social or sports club, welfare organisation, first aid, fire or ambulance service, canteen or the like) or for the protection or promotion of the insured's business activities, and the company will also indemnify, if the insured so requests (and subject to the company's consent which consent shall not be unreasonably withheld), as though a separate policy has been issued to each:

- 1.1 in the event of the death of the insured, any personal representative of the insured in respect of liability incurred by the insured;
- 1.2 any partner, director or employee of the insured in that capacity against any claim for which the insured is entitled to indemnity under this insurance or any such person in their private capacity arising out of any temporary engagement (undertaken with the insured's consent) of the insured's employees;
- 1.3 to the extent required by the conditions of any contract, any person or party named in any contract entered into by the insured for the purposes of the business;

provided that

- 1.1 the aggregate liability of the company is not increased beyond the limits of indemnity stated in the schedule;
- 1.2 any person or organisation to which this extension applies is not entitled to indemnity under any other policy;
- 1.3 the indemnity under 1.1, 1.2 and 1.3 applies only in respect of liability for which the insured would have been entitled to indemnity as if the claim had been made against the insured;
- 1.4 each party to whom the indemnity hereunder applies shall observe, fulfil and be subject to the terms, exceptions and conditions (both general and specific) of this insurance and the underlying insurance in so far as they can apply.

2 Cross liabilities clause

Where more than one insured is named in the schedule, the company will indemnify each insured separately and not jointly, and any liability arising between such insureds shall be treated as though separate policies had been issued to each, provided that the aggregate liability of the company shall not exceed the limit of indemnity stated in the schedule.

3 Emergency medical expenses clause

The company will indemnify the insured for all reasonable expenses incurred by the insured for such immediate medical treatment as may be necessary at the time of an accident causing injury to any person who may be the subject of a claim for indemnity by the insured in terms of sub-sections B and C of this section.

