



ACE American Insurance Company

Policy Conditions

Throughout this policy, the words, "we", "us", or "our" refer to ACE American Insurance Company. "You" or "your" refer to "Named Insured" as defined in the Declarations of this policy. In addition, certain words and phrases identified by quotation marks are defined in Section VII – Definitions.

I. Coverage Agreements

- A. This is excess insurance and only applies to those coverages for which underlying limits of liability are shown on the Declarations of this policy.
- B. Subject to A. above, we will pay for the amounts of loss:
 - 1. Exceeding the limits of liability of all "Underlying Insurance" stated in Item 7 of the Declarations but only for the hazards insured in such "Underlying Insurance"; and
 - 2. Only up to the limit of liability stated in the Declarations of this policy as our limits of liability.
- C. When the obligations of underlying Insurers to defend you against suits or reimburse you for defense fees, costs, and expenses you incur stops because a limit of liability has been exhausted, we will pay for the reasonable additional defense fees, costs and expenses you incur in the defense of suits. Our duty to defend or settle ends when the Limit of Liability has been exhausted by payment of judgments or settlements.

Defense fees, costs, and expenses, whether incurred by us or by you and which are covered under this policy, are in addition to our limit of liability.
- D. All provisions of the immediate "Underlying Insurance" are considered as part of this policy except any obligation to investigate, defend or pay for such costs and expenses of your defense.
- E. This policy applies to "Loss" resulting from "Bodily Injury" or "Property Damage" taking place during the policy period.
- F. This policy applies to "Loss" resulting from "Bodily Injury" or "Property Damage" occurring within the policy territory.

II. Coverage Period

Coverage is effective from the day and hour the "Named Insured" signs the "Rental Agreement" until termination of the rental, but not for a period of greater than thirty (30) days.

III. Exclusions

This insurance does not apply to:

A. Expected or Intended Injury

"Bodily Injury" or "Property Damage" expected or intended from the standpoint of the "Named Insured".

B. Workers' Compensation

Any obligation for which the "Named Insured" or the "Named Insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

C. Employee Indemnification

"Bodily Injury" to

- 1. an employee of the "Named Insured" arising out of and in the course of employment by the "Named Insured".

This exclusion applies:

- (a) Whether the "Named Insured" may be liable as an employer or in any other capacity; and

(b) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

D. Fellow Employee

"Bodily Injury" to any fellow employee of the "Named Insured" arising out of and in the course of the fellow employee's employment but only if such fellow employee is eligible for coverage under any workers' compensation, unemployment compensation or disability law, or any similar law.

E. Care, Custody or Control

"Property Damage" to or covered pollution cost or expense involving property transported by the "Named Insured" or in the "Named Insured's" care, custody or control.

F. Pollution

"Bodily injury" or "Property Damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "Pollutants":

1. That are or that are contained in any property that is:
 - (a) Being transported or towed by, handled, or handled for movement into, onto or from, the covered auto;
 - (b) Otherwise in the course of transit by or on behalf of the "Named Insured"; or
 - (c) Being stored, disposed of, treated or processed in or upon the covered auto;
2. Before the "Pollutants" or any property in which the "Pollutants" are contained are moved from the place where they are accepted by the "Named Insured" for movement into or onto the covered auto; or
3. After the "Pollutants" or any property in which the "Pollutants" are contained are moved from the covered auto to the place where they are finally delivered, disposed of or abandoned by the "Named Insured".

Paragraph 1, above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "Pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered auto or its parts, if:

1. The "Pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an auto part designed by its manufacturer to hold, store, receive or dispose of such "Pollutants"; or
2. The pollutants or any property in which the pollutants are contained are upset, overturned or damaged as a result of the maintenance or use of the covered **Automobile**; and
3. The discharge, dispersal, release or escape of the pollutants is caused directly by such upset, overturn or damage to the **Automobile**.

G. War

"Bodily Injury" or "Property Damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

H. Liability arising out of the following prohibited uses of the "Rental Vehicle":

1. to carry people or property for hire;
2. in the commission of a crime;
3. in a speed contest;
4. to tow or push anything;
5. to drive into Mexico. or
6. use by any unauthorized driver.

I. Liability for damage to the "Rental Vehicle".

J. "Loss" or "Damage" intentionally caused by the "Named Insured".

- K. Liability arising out of the use of a "Rental Vehicle" which was obtained through a "Rental Agreement" based on fraudulent information.
- L. Punitive or exemplary damages.

IV. Policy Territory

We cover losses which occur during the "Policy Period" within the United States and Canada, but only if the "Loss" arises out of a vehicle which is rented in the state of New York. Policy territory does not include Mexico.

V. Limit of Insurance

Regardless of the number of "Named Insureds", "Rental Vehicles", premium paid, or claims made, the most we will pay for "Loss" or "Damage" in any one occurrence is the difference between the limits of liability provided by the "Underlying Insurance" and \$1,000,000, for Liability coverage and: Supplementary Uninsured/Underinsured Motorists insurance equal to the difference between the underlying insurance provided in the "rental agreement" and \$100,000 per person/\$300,000 per accident.

VI. Conditions

A. **Named Insureds Duties After Loss**

Whenever it appears that a "Loss" is likely to involve this policy, notice thereof shall be given to us, any agent of ACE American Insurance Company or any office of the "Agent". Such notice shall be deemed notice to ACE American Insurance Company. Notice of loss shall be given as soon as reasonably possible or practical. Additionally each involved "Named Insured" must fully cooperate in the investigation, settlement or defense of the "Loss".

B. **Premium**

The premium for this policy shall be computed on the basis stated in amendatory Endorsement DA-5Z98.

C. **Expenses**

Legal expenses, including court costs and interest, which may be incurred by a "Named Insured" with our consent in the investigation or defense of claims, suits or other legal proceedings shall be borne by us.

D. **Subrogation**

In the event of any payment under this policy, we shall participate with any "Named Insured" and any underlying insurer in the exercise of all of a "Named Insured's" rights of recovery against any person or organization liable therefore. The "Named Insured" must do everything necessary to secure our rights and must do nothing after "Loss" to impair them. The apportionment of any amounts recovered shall be in the following order:

1. Any party, including you, who has paid an amount above payment by this policy shall be reimbursed up to the amount they have paid.
2. From any remaining balance, we will then be reimbursed up to the amount we have paid.
3. From any remaining balance, amounts paid by any underlying policies shall then be reimbursed.

Expenses and costs necessary to the recovery of an amount shall be apportioned between all parties in the ratio of their recovery. If the attempt to recover is totally unsuccessful, expenses and costs will be apportioned in the ratio of the amounts each party sought to recover.

E. **Suit**

No action can be brought by you, unless the provisions of this policy have been complied with and the amount of your obligation to pay has been decided.

Any person, organization or their legal representative is entitled to recover under this policy after they have secured a judgment or written agreement against you. Recovery is limited to the extent of the insurance afforded by this policy. No person or organization has any right under this policy to include us in any direct action against you to determine your liability nor will we be brought into such an action by you or your representative. If you or your estate becomes bankrupt or insolvent, it does not change any of our obligations under this policy.

F. Notice of Suit

Notice to the "Agent" or to us is notice to us.

G. Underlying Insurance

The policy referred to in the Declarations as Underlying Insurance shall be maintained by the "Agent" in full effect during the term of this policy. This requirement is a condition precedent of coverage.

H. Changes

This policy together with the "Rental Agreement" constitutes the entire contract of insurance. No agent has authority to change this policy or waive any of its provisions.

I. Other Insurances

When you are covered by insurance other than this policy and the Underlying Insurance listed on the Declarations, that other insurance is excess.

J. Notwithstanding anything to the contrary in this policy, the insurance coverage afforded by this policy as respects operations in New York State shall conform to the requirements of the applicable New York State Insurance Laws and the applicable New York State Insurance Department Regulations. However, the limit of liability provided by this policy shall be excess of the limit of liability of any underlying insurance or self-insurance as stated in the Declarations or any endorsements attached thereto.

VII. Definitions

- A. "Agent" means the agent listed on the Declarations of this policy.
- B. "Bodily Injury" means bodily injury, sickness or disease including death resulting from any of these.
- C. "Extended Protection Liability Insurance" means optional liability insurance elected by a "Renter" at the origin of a "Rental Agreement".
- D. "Loss" means amounts paid in settlement of a claim or judgment of which you are legally liable. "Loss" does not include cost of defense, interest on judgments, or other expenses paid in defense or investigation of the claim.
- E. "Named Insured" means those persons renting a vehicle from the "Agent" or any additional authorized driver as defined in the "Rental Agreement", or as required by statute, who has elected under the "Rental Agreement" to purchase optional "Extended Protection Liability Insurance" for an additional daily charge as shown in the "Rental Agreement", but only while occupying the rental vehicle.
- F. "Policyholder" means the Named Insured.
- G. "Policy Period" means the period during which the "Agent" may offer coverage under the policy to any "Named Insured" and does not refer to the period during which a "Named Insured" is covered by the policy as stated in the coverage period.
- H. "Pollutants" means any liquid, gaseous, or thermal irritant contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- I. "Property Damage" and "Damage" mean destruction of or loss of use of tangible property.
- J. "Rental Agreement" means the rental contract by which the "Agent" rents or leases the "Rental Vehicle". The rental agreement must be entered into:
 - (1) during the "policy period"
 - (2) within the "policy period"
 - (3) by the named insured and an individual
 - (4) for the individual's rental or lease of the named insured's automobiles for a period not exceeding thirty (30) days.

- K. "Rental Vehicle" means the motor vehicle rented or leased by a "Renter" from the "Agent".
- L. "Renter" means the person or organization who rents or leases a motor vehicle from the "Agent".
- M. "Unauthorized driver" means any individual who does not have a valid driver's license, does not meet the rental requirements as stated in the "Rental Agreement" and has not paid an additional driver charge.
- N. "Underlying Insurance" means a policy of automobile liability insurance that meets or exceeds minimum New York State automobile liability limit requirements for a "Rental Vehicle" to which this insurance applies. Underlying Insurance applying to this coverage form is listed on the declarations of this policy.