



Pollution Exclusion Clause Applying to Business Classified as Commercial Automobile, Commutation of Automobile Accident Benefits Claims Clause

Two treaty clauses and an accident benefit claims reporting form were recommended by the Directors of RRC at their meeting of June 15, 1994.

- The revised Pollution Exclusion Clause Applying to Business Classified as Commercial Property (June 1994) is attached. This clause has been revised to reflect recent changes in IBC's commercial property exclusion form.
- The Commutation of Automobile Accident Benefit Claims Clause, attached, is accompanied by its own notes.
- The Ontario Statutory Accident Benefit Schedule Reinsurance Reporting Form, attached, was developed by reinsurance claims managers to streamline reporting to reinsurers on Ontario Automobile losses pursuant to Bill 164. Some cedents commenced reserving on an actuarial basis rather than case by case, which reinsurers were concerned would lead to confusion when reporting.
 1. Use one form for each claimant.
 2. A new form should be submitted as new information is developed.
 3. Attach an explanation detailing calculation of the Income Replacement Benefit in accordance with the regulations.
 4. If an economic loss endorsement applies, indicate its financial impact on the claimant summarizes each claimant. Additional documentation which supports the form should be furnished separately, and attach a detailed explanation.
 5. The Med/Behab section of the form should indicate:
 - (a) When rehabilitation commenced
 - (b) Attitudes and disposition toward rehabilitation
 - (c) The prospect of returning to previous employment
 - (d) The likelihood of a post 104-week Loss of Earning Capacity claim
 - (e) Whether arbitration is pending or anticipated
 - (f) Involvement of Designated Assessment Centres

POLLUTION EXCLUSION CLAUSE
APPLYING TO BUSINESS CLASSIFIED AS COMMERCIAL PROPERTY

1. The following exclusion applies to all new, renewal or replacement policies which become effective on or after January 1, 1994. "Renewal policies" as used above shall also mean the next anniversary date on or after January 1, 1994 in respect of policies issued for a period of more than one year.
2. This Agreement does not cover the following:
 - (i) Direct or indirect loss, damage, cost or expense, arising out of the clean-up, removal, containment, treatment, detoxification, decontamination, stabilization, neutralization, or remediation resulting from any actual, alleged, potential, or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release, or escape of "pollutants", but this exclusion does not apply to physical loss or damage to the property insured caused directly by fire, lightning, explosion, impact by aircraft or spacecraft or land vehicle, riot, vandalism, malicious acts, smoke, leakage from fire protective equipment, windstorm, hail, rupture of pipes or breakage of apparatus (not excluded), theft or attempt thereof or accident to transporting conveyance. Damage to pipes caused by freezing is insured unless otherwise excluded.
 - (ii) Direct or indirect loss, damage, cost or expense for any testing, monitoring, evaluating or assessing of an actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants."
3. With respect to paragraph 2(i), coverage for debris removal is provided as per the following Debris Removal Clause:

Debris Removal: The Insurer will indemnify the insured for expenses incurred in the removal from the Insured's "premises" of debris of the property insured, occasioned by loss or damage to such property for which loss or damage insurance is afforded under this Form.

The insurer will indemnify the Insured for expenses incurred in the removal of debris or other property which is not insured by this Form but which has been blown by windstorm upon the location specified on the "Coverage Summary."
4. "Pollutants" means any solid, liquid, gaseous or thermal irritant, or contaminants including odour, vapour, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Notes to Accompany the RRC Commutation Clause of Automobile Accident Benefit Claims

This stand-alone clause is intended for use in excess of loss treaties subject to long-term periodic payments of first party automobile accident benefits. The language used in the clause is deliberately broad in nature in order to allow the Company and the Reinsurer considerable flexibility in arriving at a fair and timely settlement of large automobile accident benefit claims.

The clause applies solely to automobile accident benefits, and it applies to all jurisdictions, including those provinces with relatively low accident benefit levels. The term “automobile accident benefits” is expected to be addressed elsewhere in negotiations or contract wording.

The capitalized value of automobile accident benefit claims are to be added to the ultimate net loss of other claims, if any, arising out of the same occurrence.

The term “capitalized value” has been used because it is broader than “actuarial present value.” The expression not only encompasses present value, but allows the Company and the Reinsurer to embrace all factors felt to influence the fair and reasonable commutation of a claim.

It is anticipated that the Company will calculate and submit the capitalized value to the Reinsurer. If the Company has been providing periodic claim updates to the Reinsurer, including discount factors and reserving assumption, there should be little, if any, deviation in the calculation submitted for commutation.

The valuation is to take place as soon as possible, but will be deemed to take place no later than the agreed date. This also applies to claims reported to the reinsurer after the valuation date. Nothing precludes mutual agreement to delay settlement due to the circumstances of an individual claim.

The mutually appointed third party may include claims professionals, lawyers, actuaries, accountants, medical experts or insurance/reinsurance executives. The intention is to provide the maximum flexibility in choosing the appropriate third party or parties to resolve differences. Although the wording is silent on the costs of third party resolution, in the majority of cases, reasonable Company expenses arising from a justifiable third party resolution will be added to the Ultimate Net Loss.

The reference to an Arbitration clause is only to clarify that arbitration is not precluded by the “dispute resolution” contained in this clause.

COMMUTATION OF AUTOMOBILE ACCIDENT BENEFIT CLAIMS

1. The value of each Accident Benefit claim shall be calculated in accordance with the provisions of this clause and form part of the ultimate net loss.
2. The value of each Automobile Accident Benefit claim shall be the sum of:
 - a) all Automobile Accident Benefit payments made by the Company prior to the valuation date,
and
 - b) the capitalized value at the valuation date of the remaining Automobile Accident Benefit loss as agreed between the Company and the Reinsurer.
3. The valuation date for each claim shall be no later than N months following the date of loss.
4. Should the Company and the Reinsurer not agree on the capitalized value within 6 months of the valuation date of each claim, a third party will be mutually appointed to determine the capitalized value. The decision of the third party will be binding on the Company and the Reinsurer. Should a third party not be mutually agreed within the period stipulated, the terms of the Arbitration clause will govern.
5. Settlement of each Automobile Accident Benefit claim so calculated shall be full and final.