RRC TECHNICAL BULLETINS

The Reinsurance Research Council
Le Conseil de Recherche en Réassurance

TECHNICAL BULLETINS

for the Canadian Property/Casualty Insurance Market

About the Reinsurance Research Council of Canada

The RRC is an organization representing the majority of professional property/casualty reinsurers registered in Canada. RRC conducts research into all lines of property/casualty reinsurance, presenting the view of members where appropriate and providing liaison with governments, the primary insurance market and other interested parties.

The Reinsurance Research Council – Le Conseil de Recherche en Réassurance is incorporated without share capital under the statutes of Canada. The objectives of the Council are as follows:

(a) carry out all manner of research and studies relating to the reinsurance industry in all its branches, other than life, and generally to promote all lawful interests of the members of the Council;

(b) represent the members of the Council on a national basis in the preparation of briefs, resolutions and recommendations and in the submissions of the same to governmental bodies and others;

(c) promote and assist in maintaining high standards of service and ethical business practices in the reinsurance industry; and

(d) develop and maintain cordial relations among the members of the Council, with kindred associations and organizations and with the public.

The membership of the Reinsurance Research Council consists of the major providers of property/casualty reinsurance in Canada.

For more information visit our Website at www.rrccanada.org

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Preface

The Reinsurance Research Council of Canada (RRC) has developed and distributed technical bulletins on a variety of topics of interest and relevance to the property and casualty insurance industry since 1984. These were numbered chronologically and disseminated individually as they became available. This booklet is the first compilation of these bulletins and, here, we have listed them alphabetically by topic.

The first technical bulletin, released in 1994, was a summary of the English language recommended wordings issued from 1984 to 1993. Since 1994, an additional twenty-five technical bulletins have been released. All of the bulletins have undergone an extensive review, and in some cases revision, in October 2008.

The Appendix contains Discussion and Position Papers also published by the RRC, the original wordings of those bulletins which have undergone revision since their original release, and lists bulletins which have been withdrawn from circulation.

This booklet has been made available to the Canadian property and casualty insurance and reinsurance industry as a reference tool. It should be noted that these bulletins are recommended wordings only, and their use is at the discretion of RRC members.

Electronic copies of these bulletins are also available on the RRC website at www.rrccanada.org

First Edition: September 2009

Absolute Asbestos Exclusion – Liability

RRC BULLETIN 17 • OCTOBER 2008

(Originally issued November 2002)

Absolute Asbestos Exclusion – Liability

BULLETIN 17 • OCTOBER 2008

Originally issued November 2002

This Agreement shall not apply to and does not cover any actual, alleged or threatened liability for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, in consequence of, or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to such loss or losses.

Note

The RRC recommended Absolute Asbestos Exclusion – Liability has been updated and shortened. The clause is no longer sensitive to the inception date of new and renewal policies, the reinsurance "loss or losses" replace "injury, damage, loss, cost or expense," and the sentence addressing concurrent causation now falls more in line with that of IBC.

Absolute Fungi Liability Exclusion

RRC BULLETIN 19 • OCTOBER 2008

(Originally issued November 2002)

Absolute Fungi Liability Exclusion

BULLETIN 19 • OCTOBER 2008

Originally issued November 2002

This Agreement shall not apply to and does not cover any claim or claims in respect of loss or losses arising, directly or indirectly, from:

1. the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any Fungi or Spores however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of Fungi or Spores; or
2. any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with 1 above; or
3. any obligation to pay damages, share damages with or repay someone else who must pay damages, because of such loss or losses referred to in paragraphs 1 or 2 above.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to such loss or losses.

The following definitions apply to this exclusion:

Fungi includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any Fungi or Spores or resultant myco toxins, allergens, or pathogens.

Spores includes, but is not limited to, any reproductive particle or microscopic fragments produced by, emitted from or arising out of any Fungi.

Claims Reporting - Casualty

RRC BULLETIN 6 (B) • APRIL 1996

Treaty Clause titled

- Claims Reporting - Casualty

was recommended by the Directors of RBC at their meeting of March 20, 1996.

Enclosed is a copy of the subject clause along with "Notes to Accompany." The notes provide information on the development and intent of the clause.

Claims Reporting - Casualty

1. The Company shall give immediate written notice to the Reinsurer of any occurrence which may give rise to a claim,

   (a) Where the expected undiscounted value of the loss, irrespective of any apportionment of negligence, exceeds fifty percent (50%) of the retention of this Agreement;

or

   (b) Where the applicable policy limit exceeds fifty percent (50%) of the retention under this Agreement and where the occurrence involves serious bodily injury including, but not limited to:

      (i) Fatal injuries with surviving dependents of the deceased, but no notice is required where coverage is afforded only for automobile nofault benefits;
      (ii) Brain injuries;
      (iii) Paraplegia or quadriplegial;
      (iv) Any other major permanent disability.
      (v) These serious injuries shall be reported when incurred by either an insured
      (vi) person or a third party, regardless of the company's assessment of liability;

   or

   (c) where the Company is liable for an automobile no-fault claim, including loss transfers, and where any injured party is claiming benefits for more than eighteen (18) months from the date of the accident.

1. The Company's loss notice shall include the following:

   (a) A description of the loss and the injuries or damages sustained,
   (b) Paid and reserve details,
   (c) Liability assessment,

(d) If bodily injury is involved; age, occupation, marital status, dependents, wage loss and eligibility for benefits from sources other than the original policy, for each claimant,

(e) If automobile no-fault claims are involved, a breakdown of reserve and payment details for income replacement or the equivalent, medical costs, rehabilitation, attendant care, and other benefits, however such coverage may be referred to in the original policy, the expected duration of periodic payments, and the basis of discounting if any.

Notes

1. This clause is intended for use for all casualty business.

2. This is a claims reporting clause only, and does not contain other essential conditions such as claims settlement, co-operation, etc. that normally form part of a treaty. Additional paragraphs may be added to describe how claims should be handled after the initial reporting stage.

3. Changes have been made to accommodate automobile no-fault claims, both in terms of the criteria that should trigger a claims notice and the type of information that should be provided to reinsurers.

4. The reporting requirement for fatalities has been amended to eliminate unnecessary reports where coverage is limited under automobile no-fault policies to a level that does not threaten the treaty.

5. This clause now contains a clearer outline of the basic information required by reinsurers. This will assist reinsurers in establishing adequate reserves and should reduce requests for additional information from the cedent.

6. It is strongly recommended that RRC's "ONTARIO STATUTORY ACCIDENT BENEFIT SCHEDULE REINSURANCE REPORTING FORM", or its equivalent, be used when reporting automobile no-fault claims.

7. Part 1(c) refers to "loss transfers". While this phrase has no specific legal or regulatory meaning, it is a commonly used and understood phrase within the insurance industry.

Commutation of Automobile Accident Benefits Claims

RRC BULLETIN 2 (B) • JULY 1994

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.

Note

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.

Data Exposures

RRC BULLETIN 13 • OCTOBER 2001

Data Exposures

This Bulletin contains the following RRC recommended clauses:

1. Loss Occurrence Clause
2. Data Exclusion Clause

RRC recommends these clauses be applied to new and renewal policies in order to prevent a potential gap in reinsurance coverage protection.

In May 2000, an Arizona federal judge held that in the case of Ingram Micro, the "physical damage" coverage under a property insurance policy covers business losses from loss of computer data, access, use and functionality. The ruling centred on the main issue of the insurer's duty to indemnify and the insurer, American Guarantee & Liability Insurance Company asked the judge for permission to appeal the ruling immediately. The case was recently concluded with a pre-trial settlement being reached. Although part of the settlement was that there would be no discussion of terms, the "...settlement was satisfactory to both parties," according to Daniel McNeil, a legal representative for Zurich U.S., the parent company of American Guarantee. On August 27, 2001 a news item by Best's notes that, "the ruling on the definition of physical damage 'is still a matter of record in Arizona but is an unpublished opinion,' McNeil said. 'Whether it is binding or controlling outside of Arizona are things that lawyers will have to debate in later cases."

Following the May 2000 court ruling, very significant changes were made to manuscript policy wordings to provide coverage for all types of cyber risk exposures. Some of the major brokers had explicitly stated that it was their intention to amend the wordings they produce (but which are ultimately considered to be the insurers wording) for their clients, to include data corruption and loss of data as well as malfunctions and cessation. These "extensions" were being provided on the basis that the corruption or loss of data, malfunction and cessation and loss of functionality were all that was necessary in order for the insured to be indemnified under the property policy. Given the continuing widespread use of manuscript wordings in Canada, the cumulative impact of these wording revisions represents a serious aggregation exposure to reinsurers under catastrophe, per risk and proportional treaties as well as facultative business. The scope of viruses and other cyber risks also means that these unidentifiable and un-quantifiable liabilities are accumulated not only on a local, but global scale.

A computer virus can and has caused data corruption, loss of data, malfunction and cessation to happen. The impact of the "Melissa", the "I love you" viruses and "Code Red" worm was both immediate and global. The insured loss was minor due mainly to two factors: (1) neither virus was very virulent and, (2) the process of revising insurance policy wordings had not yet become widespread. It is almost certainly only a matter of time until we are faced with the global loss consequences of a computer virus of a far more virulent and destructive nature.

It is for the above reasons that the these clauses have been introduced by the RRC. The new Loss Occurrence Clause uses the wording of the NMA 2244 Loss Occurrence Clause (U.S.A. and Canada) No. 1 and adds a section addressing data exposures. This process can also be applied to the NMA 2244a Loss Occurrence Clause (U.S.A. and Canada) No.2.

The "Data Exclusion Clauses" has wordings addressing both direct damage and business interruption exposures. Policies covering both direct damage and business interruption will require the application of both sections to properly deal with the exposures.

Loss Occurrence Clause (Canada)

The term "Loss Occurrence" shall mean the sum of all individual losses directly occasioned by any one disaster, accident or loss or series of disasters, accidents or losses arising out of one event which occurs within the area of one state of the United States or province of Canada and states or provinces contiguous thereto and to one another. However, the duration and extent of any one "Loss Occurrence" shall be limited to all individual losses sustained by the Company occurring during any period of 168 consecutive hours arising out of and directly occasioned by the same event except that the term "Loss Occurrence" shall be further defined as follows:

(i) As regards windstorm, hail, tornado, hurricane, cyclone, including ensuing collapse and water damage, all individual losses sustained by the Company occurring during any period of 72 consecutive hours arising out of and directly occasioned by the same event. However, the event need not be limited to one state or province or states or provinces contiguous thereto.

(ii) As regards riot, riot attending a strike, civil commotion, vandalism and malicious mischief, all individual losses sustained by the Company occurring during any period of 72 consecutive hours within the area of one municipality or county and the municipalities or counties contiguous thereto arising out of and directly occasioned by the same event. The maximum duration of 72 consecutive hours may be extended in respect of individual losses which occur beyond such 72 consecutive hours during the continued occupation of an Assured's premises by strikers, provided such occupation commenced during the aforesaid period.

(iii) As regards earthquake (the epicentre of which need not necessarily be within the territorial confines referred to in the opening paragraph of this article) and fire following directly occasioned by the earthquake, only those individual fire losses which commence during theperiod of 168 consecutive hours may be included in the Company's "Loss Occurrence".

(iv) As regards "Freeze", only individual losses directly occasioned by collapse, breakage of glass and water damage (caused by bursting of frozen pipes and tanks) may be included in the Company's "Loss Occurrence".

Except for those "Loss Occurrences" referred to in (i) and (ii) the Company may choose the date and time when any such period of consecutive hours commences provided that it is not earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Company arising out of that disaster, accident or loss and provided that only one such period of 168 consecutive hours shall apply with respect to one event.

However, as respects those "Loss Occurrences" referred to in (i) and (ii), if the disaster, accident or loss occasioned by the event is of greater duration than 72 consecutive hours, then the Company may divide that disaster, accident or loss into two or more "Loss Occurrences" provided no two periods overlap and no individual loss is included in more than one such period and provided that no period commences earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Company arising out of that disaster, accident or loss.

No individual losses occasioned by an event that would be covered by 72 hours clauses may be included in any "Loss Occurrence" claimed under the 168 hours provision.

Losses directly or indirectly occasioned by:

(i) erasure, destruction, corruption, misappropriation, misinterpretation of "data"

(ii) error in creating, amending, entering, deleting or using "data"; or

(iii) inability to receive, transmit or use "data"

do not in and of themselves constitute an event unless directly resulting from one or more of the following perils:

fire, lightning, explosion, impact by aircraft, spacecraft or land vehicle, smoke, windstorm or hail, leakage from fire protective equipment, earthquake, tsunami, flood, freeze or weight of snow.

"Data" means representations of information or concepts, in any form.

Data Exclusion

The following exclusion applies to all new, renewal or replacement policies that become effective on or after January 1, 2002 and are within the scope of this Agreement. "Renewal policies" shall mean the next anniversary date on or after January 1, 2002, in respect of policies issued for a period of more than one year.

A. **Data Exclusion – Direct Damage**

1. (i) This Agreement does not cover "data".
   (ii) This Agreement does not cover loss or damage caused directly or indirectly by "data problem", however, if loss or damage caused by "data problem" results in the occurrence of further loss of or damage to property insured by the original insurance policy that is directly caused by fire, lightning explosion, smoke, leakage from fire protective equipment, impact by aircraft, spacecraft or land vehicle, windstorm or hail, earthquake, tsunami, flood, freeze or weight of snow, this exclusion (ii) shall not apply to such resulting loss or damage.

2. **"Data"** means representations of information or concepts, in any form.

3. **"Data problem"** means:

   (i) erasure, destruction, corruption, misappropriation, misinterpretation of "data";
   (ii) error in creating, amending, entering, deleting or using "data"; or
   (iii) inability to receive, transmit or use "data"

4. **Records:** The liability of the Reinsurer under this Agreement for loss or damage to:

   (i) books of accounts, drawings, card index systems and other records, other than as described in (ii) below, shall not exceed the cost of blank books, blank pages or other materials, plus the cost of labour for actually transcribing or copying said records;
   (ii) media, data storage devices, and programme devices for electronic and electromechanical data processing or for electronically controlled equipment, notwithstanding that "data" is not covered, shall not exceed the cost of reproducing such media, data storage devices, and programme devices from duplicates or from originals of the previous generation of the media, but no liability is assumed hereunder for the cost of gathering or assembling information or "data" for such reproduction.

B. **Data Exclusion – Business Interruption**

1. Subject to a) and b) following, the Reinsurer shall not be liable under this Agreement for loss of "Business Income" directly or indirectly caused by "data problem".

   (a) If "data problem" results in direct physical loss of or damage to property at the premises caused by:

   fire, explosion, smoke, leakage from fire protective equipment, lightning, impact by aircraft, spacecraft or land vehicle, windstorm or hail, earthquake, tsunami, flood, freeze or weight of snow, this exclusion shall not apply to resulting loss of "Business Income" suffered through such resulting loss or damage.

   (b) If "data problem" is the direct result of:

   fire, lightning, explosion, impact by aircraft, spacecraft or land vehicle, smoke, leakage from fire protective equipment; windstorm or hail, earthquake, tsunami, flood, freeze or weight of snow, at the premise this exclusion shall not apply.

2. **"Data"** means representations of information or concepts, in any form.

3. **"Data problem"** means:

   (i) erasure, destruction, corruption, misappropriation, misinterpretation of "data",
   (ii) error in creating, amending, entering, deleting or using "data", or
   (iii) inability to receive, transmit or use "data".

Dispute Resolution

(Formerly Arbitration Clause)

RRC BULLETIN 9 • OCTOBER 2008

(Originally issued October 1997)

Dispute Resolution

(Formerly Arbitration Clause)

BULLETIN 9 • OCTOBER 2008

Originally issued October 1997

1. **Negotiation**

The Company and the Reinsurer agree that should any dispute, disagreement, controversy, question or claim arise between them in connection with this Agreement including without limitation, those concerning the formation and validity of this Agreement (a "Dispute"), they will, before initiating mediation or arbitration to settle or resolve such Dispute pursuant to paragraphs 2 or 3 below, attempt in good faith to resolve the Dispute by negotiation between executives within their respective organizations who have authority to settle the Dispute and who are sufficiently senior to take a dispassionate view of the Dispute. Either party may give the other party written notice of any Dispute (the "Negotiation Notice"). If any Dispute has not been resolved within 30 days after delivery of the Negotiation Notice, either party may initiate mediation, or mediation and arbitration, as provided for in paragraphs 2 and 3 below.

2. **Mediation**

The Company and the Reinsurer agree to consider settlement of any Dispute that has not been resolved by negotiation within the 30-day period provided for in paragraph 1 above by mediation. To initiate mediation a party must give written notice (the "Mediation Notice") to the other party to the Dispute requesting a mediation. The party receiving the Mediation Notice must respond within 7 days advising whether it is willing to attempt to settle by means of mediation. If it is agreed that mediation will take place, the choice of mediator will be agreed between the parties by the exchange of lists of three names. The parties shall agree to one of those so named. If the parties are unable to agree as to the choice of mediator within 21 days of the Mediation Notice being given, each party shall nominate three individuals. Each party shall then decline two of the nominations presented by the other party. The mediator shall then be chosen from the remaining two by drawing lots. If any Dispute that the parties have agreed to mediate pursuant to this paragraph 2 has not been settled by mediation within 60 days after delivery of the Mediation Notice, either party may initiate arbitration as provided for in paragraph 3 below.

3. **Arbitration**

All disputes (if not resolved by negotiation or mediation as provided for in paragraphs 1 and 2 above), shall, as a condition precedent to any right of action, be referred to arbitration as set out below.

(a) Arbitration shall be initiated by delivery of a written notice by one party to the other requesting arbitration (the "Arbitration Notice"). Within 30 days of delivery of the Arbitration Notice, each party shall appoint an Arbitrator and the two so named shall, within a further 30 days, appoint an Umpire who has agreed to act.

(b) The Arbitrators and the Umpire (the Arbitration Panel) shall be disinterested current or past executive officers of insurance companies, reinsurance companies, or Syndicates at Lloyd's, with experience transacting in Canada the kind of business that is the subject of this Agreement. The Arbitration Panel shall not include anyone acting for this Dispute as a mediator in paragraph 2 above.

(c) In the event of one party failing to name its Arbitrator within 30 days allowed for in (a) above, the other party may appoint the second arbitrator. In the event of the Arbitrators failing to agree upon the appointment of an Umpire within 30 days of the appointment of the second Arbitrator, each arbitrator shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The Umpire shall then be chosen from the remaining two by drawing lots.

(d) If an Arbitrator or Umpire subsequent to his or her appointment is unwilling or unable to act, a new Arbitrator or Umpire shall be appointed in his or her stead by the procedure set out herein.

(e) Within 30 days of the appointment of the Umpire, the Arbitration Panel shall meet and determine a timely period for discovery procedures and schedules for hearings.

(f) The Arbitration Panel shall interpret the Agreement as a legal obligation and, in making its award, may consider current insurance and reinsurance market practice. The evidence and procedural rules of the courts of the jurisdiction where the Canadian Head Office of the Company is located shall govern all procedural issues; however, upon order of the Arbitration Panel or by the agreement of parties, time limits contained therein may be shortened or lengthened.

(g) The Arbitration Panel shall make its decision in writing within 90 days of the appointment of the Umpire, failing which, unless an extension is agreed to by both parties, a new Arbitration Panel shall be appointed in accordance with the procedure set out in this paragraph 3.

(h) A decision shall be rendered by the majority of the Arbitration Panel and shall be final and binding on both parties. The award of the Arbitration Panel shall direct, if appropriate, by whom the costs of the arbitration shall be borne and paid, and may award prejudgment interest calculated from the date that the Dispute Notice was delivered to the date of the award and/or post-judgment interest calculated from the date of the award on any sums awarded, in accordance with the applicable arbitration statute of the jurisdiction where the Canadian Head Office of the Company is located. Judgment may be entered upon the award in any court having jurisdiction.

The panel's ability to direct costs is more clearly stated. In addition, pre and post-judgment interest may be awarded (at rates specified by local statute).

(i) The arbitration shall be held in the town or city where the Canadian Head Office of the Company is located, unless otherwise agreed.

4. If more than one reinsurer is involved in the same Dispute under this Agreement, such reinsurers may consolidate and act as one party for the purposes of negotiation, mediation or arbitration pursuant to this Article. Communications by the Company shall be made individually to each reinsurer, including any acting as one party. Nothing herein shall change the liability of reinsurers from several to joint, nor impair the rights of any reinsurer under the terms of this agreement to assert separate rather than joint defences or claims or to retain separate counsel.

Note

Arbitration continues to be an important tool in reinsurance dispute resolution. However, the RRC recognizes the value of alternate dispute resolution (ADR) techniques and their growing use among a wide range of commercial enterprises. Negotiation and mediation have always been available to reinsurance parties, but the formal introduction of these valuable steps to dispute resolution encourages a more rapid dispute process at reduced cost – even if the parties nevertheless find themselves in arbitration. ADR tends to reveal if not resolve or eliminate elements of dispute. Though non-binding, these early efforts are likely to clarify or even foretell the likely outcome of a much more costly arbitration. Even in arbitration, the early efforts of one or both parties to negotiate and mediate in good faith are likely to inform on the actions and conclusions of the arbitration panel – again encouraging the best efforts and intentions of the concerned parties.

Dispute Resolution

The name of the clause has been changed to reflect its broader ADR objectives.

1. **Negotiation**

   The clause is designed to address progressively the three stages of dispute resolution. Sections 1 and 2 deal with Negotiation and mediation respectively. The former arbitration clause becomes Section 3. A fourth section addresses negotiation, mediation and arbitration when more than one reinsurer participates.

   The Company and the Reinsurer agree that should any dispute, disagreement, controversy, question or claim arise between them in connection with this Agreement including without limitation, those concerning the formation and validity of this Agreement (a "Dispute"), they will, before initiating mediation or arbitration to settle or resolve such Dispute pursuant to paragraphs 2 or 3 below, attempt in good faith to resolve the Dispute by negotiation between executives within their respective organizations who have authority to settle the Dispute and who are sufficiently senior to take a dispassionate view of the Dispute. Either party may give the other party written notice of any Dispute (the "Negotiation Notice"). If any Dispute has not been resolved within 30 days after delivery of the Negotiation Notice, either party may initiate mediation, or mediation and arbitration, as provided for in paragraphs 2 and 3 below.

2. **Mediation**

The Company and the Reinsurer agree to consider settlement of any Dispute that has not been resolved by negotiation within the 30-day period provided for in paragraph 1 above by mediation. To initiate mediation a party must give written notice (the "Mediation Notice") to the other party to the Dispute requesting a mediation. The party receiving the Mediation Notice must respond within 7 days advising whether it is willing to attempt to settle by means of mediation. If it is agreed that mediation will take place, the choice of mediator will be agreed between the parties by the exchange of lists of three names. The parties shall agree to one of those so named. If the parties are unable to agree as to the choice of mediator within 21 days of the Mediation Notice being given, each party shall nominate three individuals. Each party shall then decline two of the nominations presented by the other party. The mediator shall then be chosen from the remaining two by drawing lots. If any Dispute that the parties have agreed to mediate pursuant to this paragraph 2 has not been settled by mediation within 60 days after delivery of the Mediation Notice, either party may initiate arbitration as provided for in paragraph 3 below.

The method of selecting a mediator generates a roster of six candidates from which the disputing parties should be able to draw at least one mutually acceptable individual.

3. **Arbitration**

All Disputes (if not resolved by negotiation or mediation as provided for in paragraphs 1 and 2 above), shall, as a condition precedent to any right of action, be referred to arbitration as set out below.

(a) Arbitration shall be initiated by delivery of a written notice by one party to the other requesting arbitration (the "Arbitration Notice"). Within 30 days of delivery of the Arbitration Notice, each party shall appoint an Arbitrator and the two so named shall, within a further 30 days, appoint an Umpire who has agreed to act.

(b) The Arbitrators and the Umpire (the Arbitration Panel) shall be disinterested current or past executive officers of insurance companies, reinsurance companies, or Syndicates at Lloyd's, with experience transacting in Canada the kind of business that is the subject of this Agreement. The Arbitration Panel shall not include anyone acting for this Dispute as a mediator in paragraph 2 above.

At the recommendation of Canadian reinsurance intermediaries, the qualifications of the arbitration panel have been expanded to include Canadian experience in the Agreement's subject business.

(c) In the event of one party failing to name its Arbitrator within 30 days allowed for in (a) above, the other party may appoint the second arbitrator. In the event of the Arbitrators failing to agree upon the appointment of an Umpire within 30 days of the appointment of the second Arbitrator, each arbitrator shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The Umpire shall then be chosen from the remaining two by drawing lots.

This method of selecting an Umpire replaces the questionable practice of naming of a third party (such as the president of an industry association) to make the selection.

(d) If an Arbitrator or Umpire subsequent to his or her appointment is unwilling or unable to act, a new Arbitrator or Umpire shall be appointed in his or her stead by the procedure set out herein.

(e) Within 30 days of the appointment of the Umpire, the Arbitration Panel shall meet and determine a timely period for discovery procedures and schedules for hearings.

In light of the newly introduced ADR structure, the Arbitration Panel, and not this clause, will establish the timing of proceedings.

(f) The Arbitration Panel shall interpret the Agreement as a legal obligation and, in making its award, may consider current insurance and reinsurance market practice. The evidence and procedural rules of the courts of the jurisdiction where the Canadian Head Office of the Company is located shall govern all procedural issues; however, upon order of the Arbitration Panel or by the agreement of parties, time limits contained therein may be shortened or lengthened.

The sub-section dealing with procedural law has been replaced by an acknowledgement that procedural issues are to be determined by the procedural rules of the local court. RRC has noted that Canadian arbitrations are often hampered and delayed unnecessarily by lengthy discussions regarding evidentiary and procedural law. This correction allows the panel to instead focus its time and energy on their forte, substantive law.

(g) The Arbitration Panel shall make its decision in writing within 90 days of the appointment of the Umpire, failing which, unless an extension is agreed to by both parties, a new Arbitration Panel shall be appointed in accordance with the procedure set out in this paragraph 3.

(h) A decision shall be rendered by the majority of the Arbitration Panel and shall be final and binding on both parties. The award of the Arbitration Panel shall direct, if appropriate, by whom the costs of the arbitration shall be borne and paid, and may award prejudgment interest calculated from the date that the Dispute Notice was delivered to the date of the award and/or post-judgment interest calculated from the date of the award on any sums awarded, in accordance with the applicable arbitration statute of the jurisdiction where the Canadian Head Office of the Company is located. Judgment may be entered upon the award in any court having jurisdiction.

The panel's ability to direct costs is more clearly stated. In addition, pre and post-judgment interest may be awarded (at rates specified by local statute).

(i) The arbitration shall be held in the town or city where the Canadian Head Office of the Company is located, unless otherwise agreed.

4. If more than one reinsurer is involved in the same Dispute under this Agreement, such reinsurers may consolidate and act as one party for the purposes of negotiation, mediation or arbitration pursuant to this Article. Communications by the Company shall be made individually to each reinsurer, including any acting as one party. Nothing herein shall change the liability of reinsurers from several to joint, nor impair the rights of any reinsurer under the terms of this agreement to assert separate rather than joint defences or claims or to retain separate counsel.

This standard paragraph dealing with multiple reinsurers has been altered to encompass negotiation and mediation as well as arbitration. Greater clarity has been added by noting the freedom of consolidating reinsurers to nevertheless retain separate counsel, and by confirming that this Section applies only to the Agreement at hand.

Errors & Omissions

RRC BULLETIN 1 • JUNE 1994

(Originally issued August 1987)

Errors & Omissions

BULLETIN 1 • JUNE 1994

Originally issued August 1987

Any inadvertent delay, omission or error in fulfilling the contractual obligations of either party to this Agreement shall not relieve either party hereto from any liability which would attach to it hereunder if such delay, omission or error had not been made, provided such delay, omission or error is rectified immediately upon discovery.

This Article shall not override the provisions of any of the following articles if they are contained in this Agreement: Risks Inadvertently Insured Clause, Exclusions, Sunset Clause; nor shall it increase the liability which the Reinsurer would have had under this Agreement if such delay, omission or error had not occurred.

This Article shall in no way affect the period of coverage provided by this Agreement, nor shall it apply to any cancellation or termination clause in this Agreement.

Excess of Policy Limits & Punitive Damages

RRC BULLETIN 1 • JUNE 1994

(Originally issued August 1984)

Excess of Policy Limits & Punitive Damages

BULLETIN 1 • JUNE 1994
Originally issued August 1984

1. Excess of Policy Limits Clause

This Agreement shall protect the Company, within the limits hereof, in connection with any loss for which the Company may be legally liable to pay in excess of the limit of its original policy, such loss in excess of the limit having been incurred because of: (a) a minimum statutory limit, or (b) failure by the Company to settle a claim within the policy limit, or (c) alleged or actual negligence in rejecting an offer for settlement, or (d) alleged or actual negligence in the preparation or conduct of the defence in any suit brought against an Insured or in the preparation or the conduct of any appeal regarding such suit.

The excess policy limits loss shall be calculated separately from the reinsured loss out of which it arises, and 1 00% of the excess policy limits loss shall be added to the Company's ultimate net loss calculation.

The date of the excess policy limits loss is deemed to be the date of the original loss that gave rise to the excess policy limits award.

2. Clause 1 above shall not apply:

(a) where the loss has been incurred due to the fraudulent act or omission of a member of the staff or of the board of directors of the Company or a corporate officer of the Company, acting individually or collectively or in collusion with any other person or persons.

(b) where the loss arises under a policy or policies issued by the Company to itself, or from a policy or policies issued by the Company to other entities within the same corporate group or organization as the Company.

3. Punitive Damages Clause

This Agreement does not cover punitive damages awarded against the Company.

However,

(a) punitive damages awarded against an Insured of the Company in favour of a third party which are recoverable under the terms of the policy issued by the Company to the Insured, or

(b) punitive damages awarded directly against the Company in favour of such third party where such damages are covered under the terms of the policy issued by the Company to the Insured shall be recoverable hereunder as part of the occurrence which gave rise directly or indirectly to the award.

"Punitive Damages" as used herein shall mean amounts specifically or generally classified or considered as punitive, penal, exemplary, vindictive or aggravated damages and the like and expenses and costs relating hereto.

4. Nothing contained in Clauses 1 and 3 above shall increase the Reinsurer's limit of liability contained in Article (insert number of applicable contract article).

Fire-following Nuclear, Terrorism & Earthquake Events

RRC BULLETIN 21 • NOVEMBER 2003

Fire-following Nuclear, Terrorism & Earthquake Events

BULLETIN 21 • NOVEMBER 2003

The Insurance Bureau of Canada, in its General Bulletin 244 dated September 23, 2003, has proposed policy wording suitable to remove the **fire-following** exception in Nuclear, Terrorism and Earthquake exclusions. The Reinsurance Research Council strongly supports this position, recognizing that certain peril aggregations may be beyond the scope of Canada's general insurance market

As early as January 1st of 2004, reinsurers may require **fire-following** exceptions be removed from events involving Terrorism and Nuclear exposure, on all new and renewal multi-peril policies, through appropriate amendments to the recommended IBC policy language, or through the adoption of the RRC recommended Terrorism exclusion, Bulletin # 16, and Nuclear exclusion, revised Bulletin # 20, or both.

Bulletin 22 provides sample wording for Riders for the RRC Nuclear and Terrorism exclusions. These riders are specific comfort clauses in the event the decisions of the Supreme Court of Canada in KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada, 2003 S.C.C. 25 and Churchland v. Gore Mutual Insurance Co., 2003 S.C.C. 26 are not applied by a court of competent jurisdiction and reinsurers may wish to provide cover.

Note that the RRC recommended Terrorism exclusion and the revised Nuclear exclusion can be found on the RRC web site **www.rrccanada.org** under Bulletins # 16 and # 20 respectively.

Insolvency

RRC BULLETIN 1 • JUNE 1994

(Originally issued August 1991)

Insolvency

BULLETIN 1 • JUNE 1994

Originally issued August 1991

In the event of the insolvency of the Company, recoveries under this Agreement shall be payable by the Reinsurer directly to the Company, or to its liquidator, receiver, or statutory successor, on the basis of the liability of the Company under the policy or policies reinsured without diminution because of the insolvency of the Company.

The Company, or its liquidator, receiver or statutory successor, shall give written notice to the Reinsurer of all reported claims against the Company on any policy reinsured which might affect this Agreement within a reasonable time after such claim is filed in the insolvency proceedings. The Reinsurer may investigate and/or defend any such claim in the place of the Company. The expense thus incurred by the Reinsurer shall be chargeable, subject to the approval of the court, against the Company as part of the expense of liquidation to the extent of the proportionate share of the benefit which may accrue to the Company solely as a result of the defence undertaken by the Reinsurer.

Where two or more Reinsurers are involved in the same claim and a majority interest elect to interpose defence to such a claim the expense shall be apportioned in accordance with the terms of this Agreement as though such expense had been incurred by the Company.

In the event of the insolvency of any party hereto, the Company or the Reinsurer may offset any balances, whether with respect to premiums, commissions, losses, loss expenses, salvages or any other amount, due from one party to other under this Agreement or any other reinsurance agreement heretofore or hereafter entered into between the Company and the Reinsurer.

Loss Occurrence (Canada)

RRC BULLETIN 25 • OCTOBER 2005

Loss Occurrence (Canada)

1. The term "loss occurrence" shall mean the sum of all individual losses directly occasioned by any one disaster, accident or loss or series of disasters, accidents or losses arising out of one event which occurs within the area of one state of the United States or province or territory of Canada, or states, provinces or territories contiguous thereto and to one another. However, the duration and extent of any one "loss occurrence" shall be limited to all individual losses sustained by the Company occurring during any period of 168 consecutive hours arising out of and directly occasioned by the same event except that the term "loss occurrence" shall be further defined as follows:

   (i) As regards windstorm, hail, tornado, hurricane, cyclone, including ensuing collapse and water damage, all individual losses sustained by the Company occurring during any period of 72 consecutive hours and arising out of and directly occasioned by the same event. However, the event need not be limited to one state, province or territory, or states, provinces or territories contiguous thereto.

   (ii) As regards riot, riot attending a strike, civil commotion, vandalism and malicious mischief, all individual losses sustained by the Company occurring during any period of 72 consecutive hours within the area of one county, district or similar jurisdiction and the counties districts or similar jurisdictions contiguous thereto and one to another arising out of and directly occasioned by the same event. The maximum duration of 72 consecutive hours may be extended in respect of individual losses which occur beyond such 72 consecutive hours during the continued occupation of an insured's premises by strikers, provided such occupation commenced during the aforesaid period.

   (iii) As regards forest fires, all individual losses sustained by the Company that commence during any period of 168 consecutive hours arising out of and directly occasioned by the same event.

   (iv) As regards earthquake (the epicenter of which need not necessarily be within the territorial confines referred to in the opening Section of this Article) and fire following directly occasioned by the earthquake, only those individual fire losses which commence during the period of 168 consecutive hours may be included in the Company's "loss occurrence".

   (v) As regards "freeze", only individual losses directly occasioned by the collapse, breakage of glass and water damage (caused by bursting of frozen pipes and tanks) may be included in the Company's "loss occurrence".

2. Except for those “loss occurrences” referred to in Paragraphs 1(i), 1(ii), and 1(iii) the Company may choose the date and time when any such period of consecutive hours commences provided that it is not earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Company arising out of that disaster, accident or loss and provided that only one such period of 168 consecutive hours shall apply with respect to one event.

3. However, as respects those “loss occurrences” referred to in Paragraphs 1(i) and 1(ii), if the disaster, accident or loss occasioned by the event is of greater duration than 72 consecutive hours, or, as respects those “loss occurrences” referred to in Paragraph 1(iii), if the disaster accident or loss occasioned by the event is of greater duration than 168 consecutive hours, then the Company may divide that disaster, accident or loss into two or more “loss occurrences” provided no two periods overlap and no individual loss is included in more than one such period and provided that no period commences earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Company arising out of that disaster, accident or loss.

4. No individual losses occasioned by an event that would be covered by 72 hours clauses may be included in any “loss occurrence” claimed under the 168 hours provision.

5. For the purpose of applying this clause, any part of Canada which is not within a province or territory is deemed to be part of the province or territory to which it is closest.

6. Where the occurrence falls within the territorial definition of the first paragraph in Section 1 above, it is not necessary that the Company sustain a loss in each contiguous state, province or territory. Where the occurrence falls within the territorial definition of Section 1, subsection (ii) above, it is not necessary that the Company sustain a loss in each contiguous county, district or similar jurisdiction.

7. Losses directly or indirectly occasioned by:

   (i) erasure, destruction, corruption, misappropriation, misinterpretation of “data”
   (ii) error in creating, amending, entering, deleting or using “data”, or
   (iii) inability to receive, transmit or use “data”

   do not in and of themselves constitute an event unless directly resulting from one or more of the following perils:

   fire, lightning, explosion, water escape, impact by aircraft, spacecraft or land vehicle, smoke, windstorm or hail, leakage from fire protective equipment, earthquake, tsunami, flood, freeze or weight of snow.

“Data” means representations of information or concepts, in any form.

Nuclear Incident Exclusion Physical Damage - Reinsurance Canada & Nuclear Incident Exclusion Liability - Reinsurance Canada

RRC BULLETIN 20 • OCTOBER 2008

(Originally issued November 2002)

Nuclear Incident Exclusion Physical Damage - Reinsurance Canada & Nuclear Incident Exclusion Liability - Reinsurance Canada

BULLETIN 20 • OCTOBER 2008

Originally issued November 2002

Nuclear Incident Exclusion Physical Damage – Reinsurance – Canada

1. This Agreement does not cover any loss or damage accruing to the Company directly or indirectly, and whether as Insurer or Reinsurer, from any Pool of Insurers or Reinsurers formed for the purpose of covering Atomic or Nuclear Energy risks.

2. Without in any way restricting the operation of paragraph 1 of this clause, this Agreement does not cover any loss or liability accruing to the Company, directly or indirectly, and whether as Insurer or Reinsurer, from any insurance against Physical Damage (including business interruption or consequential loss arising out of such Physical Damage) to:

   (a) nuclear reactor power plants including all auxiliary property on the site, or
   (b) any other nuclear reactor installation, including laboratories handling radioactive materials in connection with reactor installations, and critical facilities as such, or
   (c) installations for fabricating complete fuel elements or for processing substantialquantities of prescribed substances, and for reprocessing, salvaging, chemically separating, storing or disposing of spent nuclear fuel or waste materials, or
   (d) installations other than those listed in (c) above using substantial quantities of radioactive isotopes or other products of nuclear fission.

3. Without in any way restricting the operation of paragraphs 1 and 2 of this clause, this Agreement does not cover any loss or damage by radioactive contamination or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas, accruing to the Company, directly or indirectly, and whether as Insurer or Reinsurer, from any insurance on property which is on the same site as a nuclear reactor power plant or other nuclear installation and which normally would be insured therewith, except that this paragraph 3 shall not operate:

   (a) where the Company does not have knowledge of such nuclear reactor power plant or nuclear installation, or
   (b) where the said insurance contains a provision excluding coverage for damage to property caused by or resulting from radioactive contamination, however caused, or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas.

4. Without in any way restricting the operation of paragraphs 1, 2 and 3 of this clause, this Agreement does not cover any loss or damage accruing to the Company, directly or indirectly, and whether as Insurer or Reinsurer caused:

   (a) by any nuclear incident (as defined in the Nuclear Liability Act or any other nuclear liability act, law or statute, or any amending law) or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas;
   (b) by contamination by radioactive material.

5. This clause shall not extend to risks using radioactive isotopes in any form where the nuclear exposure is not considered by the Company to be the primary hazard.

6. The term 'prescribed substances' shall have the meaning given to it by the Nuclear Safety and Control Act or by any law amendatory thereof.

7. The Company shall be the sole judge of what constitutes:

   (a) substantial quantities, and
   (b) the extent of installation, plant or site.

Note
Two nuclear exclusion wordings, one for physical damage and another for liability, replace the absolute nuclear exclusion introduced by RRC in 2003.

The nuclear physical damage exclusion draws on an older RRC exclusion still in general circulation. Changes have been made based on to the current Nuclear Act or Acts, up to date definitions, and the most recent IBC Nuclear Physical Damage exclusion.

The nuclear liability exclusion has been redrafted to follow, as closely as possible, the nuclear liability exclusion and definitions found in IBC policy forms.

Nuclear Incident Exclusion Liability – Reinsurance – Canada

1. This Agreement does not cover any loss or liability accruing to the Company directly or indirectly, and whether as Insurer or Reinsurer, from any Pool of Insurers or Reinsurers formed for the purpose of covering Atomic or Nuclear Energy risks.

2. Without in any way restricting the operation of paragraph 1 of this clause, this Agreement does not cover any loss or liability accruing to the Company, directly or indirectly, and whether as Insurer or Reinsurer arising out of:

   (a) Liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
   (b) Bodily injury, property damage or personal and advertising injury with respect to which an insured is also insured under a contract of nuclear energy liability insurance (whether the insured is unnamed in such contract and whether or not it is legally enforceable by the insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
   (c) Bodily injury, property damage or personal and advertising injury resulting directly or indirectly from the "nuclear energy hazard" arising from:

      (i) the ownership, maintenance, operation or use of a "nuclear facility" by or on behalf of an insured;
      (ii) 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";
      (ii) the possession, consumption, use, handling, disposal or transportation of "fissionable substances", or of other "radioactive material" (except radio active isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

   This exclusion applies regardless of any other contributing or aggravating cause or event that contribute concurrently or in any sequence to the bodily injury, property damage or personal and advertising injury.

3. As used in this clause,

I "Fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission;

II "Nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;

III "Nuclear facility" means:

(i) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;

(ii) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, processing or packaging waste;

(iii) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them 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;

(iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations, and

IV "Radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof, as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.

4. With respect to property, loss of use of such property shall be deemed to be property damage.

Note ***[for the two nuclear exclusions]***

Two nuclear exclusion wordings, one for physical damage and another for liability, replace the absolute nuclear exclusion introduced by RRC in 2003.

The nuclear physical damage exclusion draws on an older RRC exclusion still in general circulation. Changes have been made based on to the current Nuclear Act or Acts, up to date definitions, and the most recent IBC Nuclear Physical Damage exclusion.

The nuclear liability exclusion has been redrafted to follow, as closely as possible, the nuclear liability exclusion and definitions found in IBC policy forms.

Occurrence Limit

RRC BULLETIN 1 • JUNE 1994

(Originally issued November 1993)

Occurrence Limit

BULLETIN 1 • JUNE 1994

Originally issued November 1993

For each loss occurrence during the term of this Agreement, in respect of:

- earthquake, tsunami and fire directly occasioned by earthquake
- windstorm, tornado, hurricane, cyclone including accompanying hall, and ensuing collapse and water damage,

the maximum sum recoverable under the Agreement shall be limited to $.....

The term "Loss Occurrence" shall mean the sum of all individual losses directly occasioned by the perils specified in this clause arising out of one event.

The maximum sum recoverable limit under this clause shall not apply should the company elect to recover under this Agreement for damage to only one risk arising from a loss occurrence.

Note

1. The occurrence limit clause for property proportional treaties was created to reduce the possibility of reinSUrers suffering severe financial impairment or failure resulting from a loss occurrence due to the massive aggregation of exposures.

2. RRC cautions its members that this clause must tie in with the actual contract language.

3. No hours clause is contained within the clause because it is intended that a single limit apply to any one loss occurrence, with no reinstatements.

Personal Information & Electronic Documents Act

RRC BULLETIN 23 • OCTOBER 2008

(Originally issued December 2003)

Personal Information & Electronic Documents Act

BULLETIN 23 • OCTOBER 2008

Originally issued December 2003

The Company and the Reinsurer each acknowledge that they are in compliance with the Canadian Personal Information Protection and Electronic Documents Act (PIPEDA) and any applicable provincial privacy legislation.

Pollution/Environmental Liability Exclusion

RRC BULLETIN 15 • OCTOBER 2008

(Originally issued October 2001)

Pollution/Environmental Liability Exclusion

BULLETIN 15 • OCTOBER 2008
Originally issued October 2001

This Agreement shall not apply to and does not cover:

1. Loss or losses arising out of the actual, alleged or threatened a spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants":

   (i) at or from any premises, site or location which is or was at any time, used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
   (ii) arising from the transportation, handling, storage, disposal, processing, or treatment of waste by or for any insured or any organization for whom the insured may be legally responsible;
   (iii) at or from any premises, site or location on which any insured or contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
   (iv) at or from any premises, site or location:

      a) which is or was at any time, owned or occupied or rented or loaned to an insured; or
      b) on which any insured or contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought onto the premises, site or location in connection with such operations by or on the instruction of such insured, contractor, or subcontractor;

      but paragraph iv) does not apply to bodily injury or property damage:

         (i) if caused by heat, smoke or fumes from, or fire extinguishing substances used to fight a fire which becomes uncontrollable or breaks out from where it was intended to be, or
         (ii) if caused by smoke, fumes, vapour or soot from equipment used to heat, cool or dehumidify the building or equipment that is used to heat water for personal use, by the building's occupants or their guests, or
         (iii) if all four of the following conditions are met:

(a) the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" commences during the term of this agreement;
(b) the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" occurs in a quantity or with a quality that is in excess of that which is routine or usual to the business of the insured;
(c) the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is detected within 120 hours of its commencement;
(d) the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is reported to the cedant within 120 hours of its being detected.

(v) which occurred prior to the term of this agreement.

2. Any fines, penalties, punitive or exemplary damages assessed against or imposed upon any insured.

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

Note
The RRC recommended Pollution Liability Exclusion has been updated. The exclusion is no longer sensitive to the inception date of new and renewal policies, and it now includes the IBC's policy coverage for smoke, fumes, vapour or soot arising from certain building heating, cooling and hot water equipment.

Pollution Exclusion - Applying to Business Classified as Commercial Property

RRC BULLETIN 26 • OCTOBER 2005

Pollution Exclusion - Applying to Business Classified as Commercial Property

1. This Agreement does not cover:

   (a) loss or damage caused directly or indirectly by any actual or alleged spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants", nor the cost or expense of any resulting "clean-up", but this exclusion does not apply:
   (i) if the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is the direct result of a peril not otherwise excluded;
   (ii) to loss or damage caused directly by a peril not otherwise excluded.

   (b) 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".

2. With respect to paragraph 1(a), the following extension of coverage shall be deemed to be included within the sum insured, at the location where the loss or damage is incurred:

   (a) Debris Removal: Subject to the terms of this Agreement the Reinsurer will pay the Company for expenses incurred in the removal from the insured premises of debris of the property insured.
   It is understood that in respect of the original insurance policy the amount payable under this extension shall be deemed not to exceed 25% of the total amount payable for the direct physical loss to property insured plus the amount of the applicable deductible.

   (b) Removal of Windstorm Debris: Subject to the terms of this Agreement the Reinsurer will pay the Company for expenses incurred in the removal of debris or other property which is not insured but which has been blown by windstorm upon an insured location.

3. With respect to reinsurances of extensions of coverage afforded in paragraph 2 above, this Agreement does not apply to costs or expenses:

   (a) to "clean up" "pollutants" from land or water; or
   (b) for testing, monitoring, evaluating or assessing of an actual, alleged, potential, or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants."

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including odour, vapour, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

5. "Clean up" means the removal, containment, treatment, decontamination, detoxification, stabilization, neutralization, or remediation of "pollutants", including testing which is integral to the aforementioned processes.

6. It is warranted that Pollution or Contamination shall not be included as a peril insured under any policy issued by the Company.

Pollution Exclusion - Commercial Automobile

RRC BULLETIN 1 • JUNE 1994

(Originally issued March 1986)

Pollution Exclusion - Commercial Automobile

BULLETIN 1 • JUNE 1994

Originally issued March 1986

The following exclusion applies to all new, renewal or replacement policies which become effective on or after January 1st, 1986.

"Renewal policies" as used above shall also mean the next anniversary date on or after January 1 st, 1986 in respect of policies issued for a period of more than one year.

This Agreement does not cover any liability arising from vehicles known by the Company to be used for the transportation of:

(a) Hazardous chemicals including but not limited to acids, alkalis, gases, oils, pesticides, herbicides and polychlorinated biphenyls (P.C.B.'s).
(b) Petroleum products including but not limited to gasoline, oils and liquid petroleum gas (L.P.G)
(c) Industrial or other wastes
(d) Other dangerous substances referred to in the Transportation of Dangerous Goods Act.

The above exclusion does not apply to the following:

1. Petroleum tankers or trailers owned and/or operated by Contractors for the sole purpose of refueling their construction machinery.

2. Tar tankers or trailers owned and/or operated by Contractors

3. Vehicles operated by fuel dealers in rural areas (not exceeding three tanker vehicles)

4. Vehicles operated by farmers for transporting herbicides, pesticides, fertilizers, gasoline or oil for their own use.

5. Wholesale or retail delivery of packaged goods that are harmful through inhalation of their vapours, by skin contact or ingestion.

Present Value

RRC BULLETIN 1 • JUNE 1994

(Originally issued June 1990)

Present Value

BULLETIN 1 • JUNE 1994

Originally issued June 1990

With respect to First Party Accident Benefits, the value of the loss for the purpose of this Agreement shall be the sum of:

(a) the actuarial present value as agreed between the Company and the Reinsurer; and
(b) amounts paid by the Company prior to the establishment of the actuarial present value.

The actuarial present value shall be established, or shall be deemed to have been established, no later than months following the date of loss.

Note
This clause is designed to be added as the final paragraph to the ultimate net loss clause of an excess wording.

(i) The clause applies to First Party Accident Benefits and no reference is made to Ontario or to the OMPP.
(ii) The clause has been made simple yet specific in order to encourage and facilitate its acceptance.
(iii) The 39 month time limit is based on the three years set by the OMPP to determine continuing disability plus three months to secure Cedant/Reinsurer agreement. The 39 months are measured from 'date of loss' and not 'date of first payment.' This item is subject to negotiation and time limits up to 84 months have been agreed.
(iv) Should a claim be reported after many years, the present value is 'deemed to have been established' at 39 months. This is a y= important phrase, intended to avoid losses that exceed the treaty retention simply because of their late reporting.
(v) "Actuarial present value" forms the basis of agreement, but no further explanation is given. The calculation of present value will undoubtedly require the cooperation of cedant and reinsurers. The mechanics of this process are not addressed by the proposed clause as theywill be the subject to discussions between the individual cedants and reinsurers. We believe that agreement can be reached for a number of reasons:
    (a) Too large a value can be contested
    (b) A value only 'somewhat' too high will be repaid as the treaty's rate is requoted each year
    (c) A pattern of values and rates of interest will emerge as the number of claim settlements grow
    (d) If an annuity is purchased, then Ultimate Net Loss is clearly established.

(vi) Reinsurers should also be aware of the possibility of accumulated interest on late reported claims and be prepared to deal with that eventuality.

Property Fungi Exclusion

RRC BULLETIN 18 • OCTOBER 2008

(Originally issued November 2002)

Property Fungi Exclusion

BULLETIN 18 • OCTOBER 2008

Originally issued November 2002

This Agreement shall not apply to and does not cover any actual, alleged or threatened liability whatsoever for any claim or claims in respect of loss or losses consisting of or caused directly or indirectly, in whole or in part, by Fungi or Spores (including, without limitation, the cost or expense for testing, monitoring, evaluating or assessing of Fungi or Spores), unless such Fungi or Spores are directly caused by or result from fire, lightning, explosion, impact by aircraft, spacecraft or land vehicle, riot, vandalism or malicious acts, smoke, leakage from fire protective equipment, windstorm, hail, earthquake, tsunami, sewer back-up, flood, freeze or weight of snow, and is not otherwise excluded in this Agreement.

The following definitions apply to this exclusion:

> Fungi includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any Fungi or Spores or resultant myc toxins, allergens, or pathogens.
>
> Spores includes, but is not limited to, one or more reproductive particles or microscopic fragments produced by, emitted from or arising out of any Fungi.

Note

The Property Fungi Exclusion and the Absolute Fungi Liability Exclusion have been redrafted. These clauses no longer require an inception date. In the case of the Absolute Fungi Liability Exclusion, the concurrency clause is now in line with that of IBC.

Riders for Nuclear Exclusion & Terrorism Exclusion

RRC BULLETIN 22 • NOVEMBER 2003

Riders for Nuclear Exclusion & Terrorism Exclusion

BULLETIN 22 • NOVEMBER 2003

This Bulletin provides sample wording for Riders for the RRC Nuclear and Terrorism exclusions. These riders are specific comfort clauses in the event the decisions of the Supreme Court of Canada in *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada,* 2003 S.C.C. 25 and *Churchland v. Gore Mutual Insurance Co.*, 2003 S.C.C. 26 are not applied by a court of competent jurisdiction and reinsurers may wish to provide cover.

Rider for Nuclear Exclusion

This exclusion will not apply to that portion of any resultant (or ensuing) fire loss caused directly or indirectly, in whole or in part, by a Nuclear Loss required to be covered under a property insurance policy solely by reason that a final, non-appealable decision of a court of competent jurisdiction does not apply the decisions of the Supreme Court of Canada in *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada*, 2003 S.C.C. 25 and *Churchland v. Gore Mutual Insurance Co.*, 2003 S.C.C. 26 to the statute governing the interpretation of such policy.

Rider for Terrorism Exclusion

This exclusion will not apply to that portion of any resultant (or ensuing) fire loss caused directly or indirectly, in whole or in part, by "Terrorism" or by any activity or decision of a government agency or other entity to prevent, respond to or terminate "Terrorism" required to be covered under a property insurance policy solely by reason that a final, non-appealable decision of a court of competent jurisdiction does not apply the decisions of the Supreme Court of Canada in *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada*, 2003 S.C.C. 25 and *Churchland v. Gore Mutual Insurance Co.*, 2003 S.C.C. 26 to the statute governing the interpretation of such policy.

Risks Inadvertently Insured

RRC BULLETIN 1 • JUNE 1994

(Originally issued August 1992)

Risks Inadvertently Insured

BULLETIN 1 • JUNE 1994

Originally issued August 1992

1. lt is agreed that in the event a risk excluded from this Agreement by the list of exclusions is inadvertently insured by the Company as a result of either:

   (a) the Insured extending its operations without the Company having been advised, or (b)

   (b) the acquisition by the Insured of another company whose operations are excluded, the protection provided by this Agreement shall nevertheless apply to such risk until the moment the existence of such risk is discovered by or advised to the Company and thereafter for an additional period of thirty (30) days.

2. During this additional period of thirty (30) days immediately following discovery by or advice to the Company of the Inadvertently insured risk the company may forward to the Reinsurer complete information relating to the risk. Upon receipt of such information the Reinsurer shall decide whether or not the risk can continue to be covered by the Agreement and so advise the Company immediately in writing.

3. This section of the Agreement is not intended, under any circumstances, to cover underwriting errors or omissions made by the Company nor to bring into the scope of this Agreement classes of insurance which otherwise are excluded.

Note

The original intention of this clause was to cover a risk which was acceptable under the treaty but then extended its operation, without the ceding company's knowledge, to the extent that it became an excluded risk. Alternatively it would provide some measure of protection for a ceding company whose agent wrote a type of risk which was excluded under the agency agreement. With the advent of direct writers and tied-agency companies and the extension of binding authorities to cover a certain amount of small and now not-so-small) commercial business, it became necessary to rewrite the then-existing clause with a tighter version. In the RRC version there are two important elements: it specifically excludes underwriting errors or omissions made by the company and does not bring in classes of insurance - as opposed to individual risks- which are excluded.

Salvage & Recoveries

RRC BULLETIN 1 • JUNE 1994

(Originally issued August 1987)

Salvage & Recoveries

BULLETIN 1 • JUNE 1994

Originally issued August 1987

All salvage, recoveries and payments recovered or received subsequent to a loss settlement under this Agreement shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties thereto.

Where loss recoveries are made by the Cedant and the amount recovered is greater than the total original payment by reason of interest or otherwise, then the amounts in excess of the total original payment shall be distributed proportionate to each party's share of the total original payment.

Self-Insured Obligations

RRC BULLETIN 1 • JUNE 1994

(Originally issued August 1987)

Self-Insured Obligations

BULLETIN 1 • JUNE 1994

Originally issued August 1987

A policy issued by the Company wherein the Company is named as the insured either alone or jointly with another party shall, subject to the other terms and conditions of this Agreement, be deemed to be a Policy coming within the scope of this Agreement, notwithstanding that no legal liability may arise in respect thereof by reason of the fact that the Company is the insured or one of the insureds.

Any such Policy shall have been issued prior to loss on the same form and at the same premium as if the insured and the Company were dealing at arm's length and claims, if any, under such Policy shall be settled strictly in accordance with the Policy conditions.

It is further agreed and understood that the provisions of any 'Risks Inadvertently Insured' clause contained in this Agreement shall not apply to such policies.

Note
The original intent of this clause was to enable a company to issue a policy in which it insures itself. Under normal circumstances, of course, there is no legal liability attaching on a policy of this nature. Nevertheless, it was recognized that a company might wish to insure its own building or property and therefore a clause was drawn up to cover policies of this type.

Gradually, however, the clause was extended so that it ultimately came to cover not only those exposures for which the company had issued a policy to itself but also to cover retained deductibles, underinsurances and absences of insurance to the extent that it read like an umbrella coverage for the ceding company.

It is not the intention of the reinsurers to provide protection where the ceding company has failed to purchase sufficient insurance to cover its exposures nor to act as an umbrella insurer to ceding companies. The recommended clause does away with extraneous coverages which have crept in and provides the coverage that was originally intended.

Special Termination

RRC BULLETIN 24 • OCTOBER 2008

(Originally issued October 2005)

Special Termination

BULLETIN 24 • OCTOBER 2008
Originally issued October 2005

1. It is understood and agreed that should either party to this Agreement:

   (a) fail to meet the minimum capital requirements of any Canadian or other regulatory authority having jurisdiction over such party; or
   (b) go into liquidation or have a receiver appointed; or
   (c) cease writing new or renewal business under the direction or order of a Canadian or other appropriate regulatory authority; or
   (d) enter any arrangement which results in a change in the persons that legally or factually controlled such party at the time this Agreement became effective (for the purposes of this paragraph (d), the term "person" means a natural person, body corporate, trust, partnership, fund, unincorporated association or organization, government or any agency thereof, or a personal representative); or
   (e) in the case of the Company only, effect a reduction in the net retained share of the business reinsured hereunder without the prior written consent of the Reinsurer;

   the party which is subject to any of the forgoing shall immediately notify the other party.

2. Acting upon actual or constructive notice that an event described in paragraph 1 has occurred, the other party shall have the right to terminate this Agreement by registered letter, facsimile transmission or any other means of communication that provides a permanent record of such communication, stating therein the date and time of termination, which shall be not less than 30 days following delivery of such notice.

3. (a) With regard to that part of this Agreement which is reinsured on a proportional basis (if any), such notice of termination may, at the option of the party giving notice, include termination of the business in force at the date of termination against return of the unearned premiums less applicable commission thereto.
   (b) With regard to that part of this Agreement which is reinsured on a non-proportional basis (if any), any premium due shall be calculated by the Company within 40 days of the date of termination, and, if not earned in full or in part by reinstatement provisions, shall be based upon the applicable subject premium income of the Company up to the date of termination or pro rata of the annual minimum premium, whichever is greater.

4. If the performance of the whole or any part of this Agreement is prohibited or rendered impossible legally or factually (including, without limitation, as a result of any law or regulation which is or shall be in force in any country or territory) or, if any law or regulation shall prevent, directly or indirectly, the remittance of all or any part of the balance of payments due to or from either party, the party affected shall inform the other party immediately, and either party may terminate this Agreement in accordance with paragraph 2 above.

Note

1. Paragraph 1 (a) and (c) – The use of "Canadian or other appropriate regulatory authorities" is more appropriate to a market (Canada) in which not all treaty participants may answer to Canadian regulators. RRC notes that the phrase "any regulatory authority" may be so broad as to include regulators of inappropriate or irrelevant foreign jurisdictions.

2. Paragraph 1 (a) to (d) – The word "or" has been added after each sub-section' making it clear that any one condition will be sufficient to invoke special termination.

3. Paragraph 2: The specific communication option "telegram" has been deleted.

4. Paragraph 2 stipulates that termination "shall not be less than 30 days following delivery of notice." RRC has noted the frequent use of concluding words to the effect, "but subject to the expiration date of this Agreement." Inasmuch as the party asking for termination is unlikely to seek an extension of cover, these concluding words have been rejected by RRC as unnecessary.

5. Paragraph 3 (a) and (b) – Although one is unlikely to encounter a treaty that is both proportional and non proportional, RRC has chosen to publish a wording that can be applied to either type of Agreement.

6. Paragraph 3 (b) – The wording of this sub-section is unchanged from that of RRC Bulletin 24, dated October 2005. However, RRC has noted the occasional use of wordings which fail to recognize how reinstatement provisions may effect the calculation of earned premiums. This RRC recommended wording includes the phrase "if not earned in total or in part by reinstatement provisions" in order to ensure that post-loss premium adjustments, if any, adhere to treaty intent and to market practice. (See the separate note, "Effect of Reinstatement Provisions on the Adjustment of Special Termination Premiums" below.)

7. Paragraph 3 (b) – RRC has noted the occasional use of wordings which contradict the method of calculating earned premiums set out elsewhere in the Agreement. This RRC recommended wording includes the phrase "applicable subject premium income of the Company up to the date of termination or pro rata of the annual minimum premium, whichever is greater" in order to ensure that premium adjustments, albeit pro rated, adhere to treaty intent and to market practice.

8. Paragraph 4: The performance of the Agreement has been qualified by the words "of the whole or any part" for the sake of clarity.

Note

Effect of Reinstatement Provisions on the Adjustment of Special Termination Premiums

Many excess of loss reinsurance treaties include a provision for one or more reinstatements. In such cases, both treaty intent and market practice determine how contractual premiums are earned in the event of a loss or losses to the Agreement. Quite simply, in the case of "paid reinstatements" or in

the case of "one free reinstatement," it is recognized that all or part of the treaty's limit of liability must be reinstated if consumed by a loss and that a corresponding portion of the agreed treaty premium is deemed to be fully earned. Even if the contract provides a single free reinstatement, as is the case with homeowner property policies and many commercial property policies, the agreed reinsurance premium is fully earned, or in the case of a partial loss, is earned to the proportion that the loss bears to the treaty limit of liability.

Should one party to the agreement invoke the special termination provision after a treaty loss has triggered the reinstatement premium provision, then pro rata adjustment of premiums as set out in Paragraph 3, sub-section (b) will apply only to those reinstated premiums and to the portion of originally agreed premiums, if any, that have not been exhausted. Should there be no reinstatement provision, or should there be no loss to invoke the reinstatement provisions, then Paragraph 3, sub-section (b) addresses the pro rated calculation of premium with equal thoroughness. Further elaboration is unnecessary and, as RRC has observed, erroneous or, at best, counterproductive.

Terrorism Exclusion & Terrorism Occurrence Limit

RRC BULLETIN 16 • OCTOBER 2008

(Originally issued November 2001)

This Agreement shall not apply to and does not cover loss or damage caused directly or indirectly, in whole or in part, by "Terrorism" or by any activity or decision of a government agency or other entity to prevent, respond to or terminate "Terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage.

"Terrorism" means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

Note
The RRC recommended Terrorism Exclusion has been updated and shortened. The clause is no longer sensitive to the inception date of new and renewal policies, and a sentence addressing concurrent causation now falls more in line with that of IBC

Occurrence Limit Clause

Terrorism

For each loss occurrence during the term of this Agreement, in respect of terrorism, the maximum sum recoverable under this Agreement shall be limited to $ (_____dollars).

The term "loss occurrence" shall mean the sum of all individual losses directly occasioned by terrorism arising out of one event.

"Terrorism" means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

Ultimate Net Loss

RRC BULLETIN 14 • OCTOBER 2008

(Originally issued October 2001)

Ultimate Net Loss

BULLETIN 14 • OCTOBER 2008

Originally issued October 2001

1. The term "Ultimate Net Loss" shall mean the claim for indemnity including loss adjustment expense paid or payable by the Company on its net retained liability after making deductions for all recoveries, salvages, subrogations and all claims on inuring reinsurance, whether collectable or not.

2. The term "loss adjustment expense" shall mean the actual expenses incurred that can be directly attributed to a specific claim for indemnity, other than office expenses of the Company and salaries of its regular employees. Upon request the Company agrees to furnish the Reinsurer with information relating to loss adjustment expenses including but not limited to the following:

   - Investigation, adjustment, expert and legal expenses,
   - Court costs, pre and post judgment interest,
   - Communication charges,
   - Temporary housing and office space,
   - Travel and meals.

3. Notwithstanding the above, adjustment expenses shall include:

   (a) when adjustment of a claim is entrusted to employees of the Company employed asexperts, or loss adjusters, an appropriate part of such experts' or loss adjusters' salaries and expenses;
   (b) when adjustment of a claim is entrusted to independent adjusters, such adjusters' expenses.

4. The claim for loss adjustment expense is to be reported as a separate amount from the claim for indemnity.

5. Nothing herein shall be construed to mean that losses under this Agreement are not recoverable until the Company's ultimate net loss has been ascertained.

Note
Among the minor changes to this clause, the definition of "expert" has been deleted.

Y2K Date Recognition Exclusions

RRC BULLETIN 12 • MAY 1998

Y2K Date Recognition Exclusions

BULLETIN 12 • MAY 1998

The Reinsurance Research Council, in Technical Bulletin No. 10 or November 1997, indicated that it was working with insurance industry organizations and committees to explore the "Year 2000" issue.

Enclosed are Date Recognition Exclusions approved by the RRC Board of Directors at their meeting on May 27, 1998:

- **Date Recognition Exclusion Applying to Liability Other Than Personal Liability**
- **Date Recognition Exclusion Applying to Business Classified as Commercial Property**

Date Recognition Exclusion Applying To Liability Other Than Personal Liability

This Agreement does not apply to any liability for loss, damage, claim, cost or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or caused by or relating to the anticipated or actual inability or failure of any electrical device, including components thereof, or any computer hardware or software, to correctly read, recognize, interpret or process any encoded, abbreviated or encrypted date, time or combined date/time data or data field, whether occurring before, during or after the year 2000. Such inability or failure shall include any error in original or modified data entry or programming.

Date Recognition Exclusion Applying To Business Classified As Commercial Property

1. This Agreement does not apply to any loss, damage, claim, cost or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or caused by or relating to the inability or failure of any:

   (a) electronic data processing equipment, or other equipment, including micro-chips embedded therein;
   (b) computer program;
   (c) software;
   (d) media;
   (e) data;
   (f) memory storage system;
   (g) memory storage device;
   (h) real time clock;
   (i) date calculator; or
   (j) any other related component, system, process or device,

to correctly read, recognize, interpret or process any encoded, abbreviated or encrypted date, time or combined date/time data or data field, whether occurring before, during or after the year 2000. Such inability or failure shall include any error in original or modified data entry or programming.

2. Section 1 above shall not apply to loss or damage to the property insured resulting from Fire, Lightning, Explosion of Natural Coal or Manufactured Gas, Impact by Aircraft, Spacecraft or Land Vehicle, Riot, Vandalism or Malicious Acts, Smoke, Leakage from Fire Protective Equipment, Windstorm or Hail.

3. The failure to recognize, interpret or process any date shall not in and of itself be regarded as an event, or as a Loss Occurrence.

The Reinsurance Research Council
Le Conseil de Recherche en Réassurance

Discussion & Position Papers

Accident Benefit Carve-out Considerations

RRC BULLETIN 3 • MAY 1998

Accident Benefit Carve-out Considerations

The introduction of Statutory Accident Benefit "carve-outs" into Automobile excess reinsurance prompts a number of questions about the interaction of carve-out and residual reinsurance. The need for a clear understanding of this interaction becomes even more imperative when carve-out is described as "inuring to the benefit" of the residual P&C reinsurer.

- Insurers and reinsurers must understand and agree the methods to be used in allocating costs and other expenses between a carve-out and a residual reinsurer or between a carve-out claimant and other claimants involved in the same accident.

- The responsibility for OEF 45 is generally made clear in new proposals. However, there may be other "accident benefits" which, though not strictly Statutory Accident Benefits, are only assumed to be the responsibility of the carve-out market. As an example, a creative claim settlement (eg. buying a business venture in lieu of income replacement) may be rejected by carve-out markets as non-Statutory.

- Commutation by carve-out reinsurers is understood to be full and final, but it should be determined that this applies to all parties. Insurers and residual reinsurers should agree if commutation of a claimant will be conducted simultaneously with carve-out commutation regardless of commutation period of the residual reinsurer. At the very least, the residual reinsurer must establish to whom any subsequent deterioration or improvement in the settlement value of that particular claimant will fall.

- P&C reinsurers are familiar with the concept of one treaty "inuring to the benefit" of another, as in the case of a property risk excess treaty inuring to the benefit of a catastrophe treaty. Unfortunately, this simple comparison is extremely dangerous.

- In the case of Statutory Accident Benefit carve-outs, "inuring" may indicate agreement that any and all AB claims rejected by the carve-out reinsurers due to exclusions, agreement limitations (above and beyond the limited reinstatements normally advised), sunset, refusal or failure to meet obligations for whatever reason, any other cause not previously contemplated, will fall to the residual reinsurers. The "inuring" clause may well transfer liability to P&C reinsurers for defaulting life reinsurers, certain legal costs associated with the AB claimant, changes in accident benefits, and any number of other exposures which are only assumed to belong to the carve-out market.

- Many, if not all, carve-out commutation wordings apply full and final commutation to the treaty and not simply to individual claims. This constitutes a sunset feature notmerely for unreported claims, but also for open claims below the retention at the date of commutation. Insurers and reinsurers must recognise this subtle but extremely important distinction which separates carve-out commutations from the intent of "Sunset Clauses" used by P&C reinsurers in the mid-1980s. If claims are not reported to the carve-out, or if they are reported, but are reserved below the retention at the date of commutation, residual reinsurers must assume the "sunrise" of both unreported losses and losses which subsequently deteriorate into the layer. For this reason, residual reinsurers must understand how the insurer intends to commute the treaty with the carve-out reinsurer.

The absence of any agreement or understanding between the insurer and the residual reinsurer can only serve the interests of the carve-out market. The carve-out market will undoubtedly find it much easier to negotiate commutation and coverage disputes when the P&C reinsurer has unwittingly offered a broad safety net for "all remaining loss."

These, and other possible questions, suggest that insurers and P&C reinsurers must communicate the details of accident benefit carve-outs and establish, through discussion and negotiation, the extent of residual protection, as well as the limitations, both stated and unstated, of carve-out agreements. Only then can the true value of the carve-out protection be assessed.

First Party Pollution Coverage - Commercial Property

RRC BULLETIN 7 • OCTOBER 1996

First Party Pollution Coverage - Commercial Property

BULLETIN 7 • OCTOBER 1996

This bulletin will provide a commentary on the relationship between the commonly used RRC pollution exclusion for commercial property, March 1986 edition, and the new endorsements introduced by IBC near the end of 1995. This bulletin will also summarize the work being done by the Property Subcommittee to address the exposures presented under the new IBC endorsements.

On December 19, 1995, the IBC released Bulletin no: AMSP95-01, and introduced two new endorsements: IBC #4050 Land and Water Pollution Clean Up Endorsement, and IBC #4051 Extended Pollution Clean Up Endorsement. These endorsements provide a significant broadening of cover. In brief, the two IBC optional endorsements provide clean up costs coverage for two exposures which are excluded under the basic forms:

1. When pollution-related loss or damage to the property insured is covered by the basic form, the Land and Water Pollution Cleanup Endorsement will pay for cleanup of land and water at the Insured's premises.

2. Whether a pollution-related loss is covered or excluded by the basic form, the Extended Pollution Clean Up Endorsement will pay for cleanup of all property, including land and water, at the Insured's premises, as well as loss or damage to the property insured caused by pollution, which is not covered by the basic form.

Both options provide coverage for related testing and monitoring expenses, but only on the Insured's premises.

The coverage provided by these two endorsements is specifically excluded under those treaties which contain the RRC Pollution Exclusion Applying to Business Classified as Commercial Property, March 1986. The RRC clause specifically excludes "...any loss or damage, whether direct or indirect, nor any cleanup cost incurred resulting from any spill, discharge or seepage of a pollutant/contaminant." The last paragraph of the RRC exclusion also states "It is warranted that 'pollution' or 'contamination' shall not be insured as a peril insured under any policy issued by the Company."

The two new IBC endorsements are optional and RRC members are reminded that IBC has recommended that a separate limit of amount of coverage be provided. Coverage provided under reinsurance contracts will, of course, be determined through discussions between individual insurers and reinsurers. The Property Subcommittee is reviewing the current RRC clause with the intention of having an updated version available for business incepting or renewing in January 1997. It is expected that the revised standard RRC commercial property exclusion will continue to exclude the coverage provided under the optional IBC endorsements.

Since IBC #4051 does not require pollution-related losses to be covered under the basic form, many property underwriters feel that this coverage should be provided through the creation of a separate class of business and not under traditional property contracts.

Ice Storm 1998

RRC BULLETIN 11 • MARCH 1998

Ice Storm 1998

BULLETIN 11 • MARCH 1998

Following the ice storm which affected Quebec and parts of eastern Ontario, insurance companies have raised a number of questions directed to the reinsurance community. Reinsurance claims and underwriting personnel, in an effort to address these inquiries, reviewed contract principles, practice and intent underlying catastrophe reinsurance and the treaty hours clause. It is hoped that their conclusions, expressed below, will help answer the most frequently asked questions.

1. The commonly used Hours Clause appearing in treaty wordings limits occurrences such as the ice storm to a single 168-hour period. The ceding company is free to choose when that period starts, but must realize that losses arising as a result of the event continuing beyond 168 hours would fall outside the catastrophe treaty's Ultimate Net Loss. The 168-hour period cannot be followed by a second 168-hour period in the case of a single event.

2. It is generally held that the Proximate Cause will determine which losses should be allocated to the Ultimate Net Loss of a catastrophe treaty. That is to say, there should be a direct linkage between the ice storm and the loss. This linkage is more important than whether or not the claimed loss happened during the 168-hour period or in the days following the event. The following examples should help to illustrate the principle of Proximate Cause:
   Collision and Auto Damage: Auto collisions that occurred during the ice storm resulted from driver error (inasmuch as drivers did not compensate for icy conditions) and should not be included in the ice storm claim. Vehicles damaged by falling branches due to the weight of ice could be aggregated for claim purposes.

   Burglary and Theft: Burglaries and thefts that occur during or following the 168 hours are individual events and should not form a part of a catastrophe claim. The Proximate Cause of these losses was not the ice storm.

   Fire Losses: Example - An insured lights a candle due to the power outage and the candle sets fire to the curtains, causing fire damage. While the loss is covered under the homeowner policy, it should not be accumulated with the ice storm losses. The careless action of the homeowner and not the ice storm was the Proximate Cause of the loss. In the case of fires caused by generators, whether these fire losses happened during the 168 hours or after, they would be covered as a statutory fire loss but should not be included under the ice storm loss. Again, the Proximate Cause of the loss was perhaps a spark or overheated generator, and not the ice storm.

   Using the theory of Proximate Cause, not all fires would be excluded. The return of electricity may have started a breaker panel fire or a fire due to appliances left on during evacuation. In some cases, these may be considered a part of the 168-hour loss.

Reinsurance and the Y2K Millennium Issue

RRC BULLETIN 10 • NOVEMBER 1997

Reinsurance and the Y2K Millennium Issue

BULLETIN 10 • NOVEMBER 1997

The Reinsurance Research Council is actively working with insurance industry organizations and committees to explore underwriting issues and sound practices related to computer date errors. As well, RRC is examining Y2K issues unique to reinsurance. This bulletin presumes a general awareness of the Y2K problem and focuses on loss to insurable interests. Computers and computer programs unable to deal with double-zero date calculations have the potential of causing physical and economic loss across a wide range of property and casualty insurance perils. A partial list serves only to illustrate the breadth of exposure:

- Business interruption;
- Contingent business interruption through the cascade effect of interdependent services and suppliers;
- Products failure to perform;
- Physical damage or bodily injury due to the failure of computerized equipment or due to false information generated by computers;
- Directors and Officers arising from companies or organizations unprepared or inadequately prepared for Y2K;
- Errors and omissions against consultants, lawyers, accountants and other professionals;
- Liability for actions taken or not taken due to computer error;
- Fidelity, perpetrated either under the cover of Y2K or by the very programmers quickly hired to fix software;
- Crime, or increased moral hazard by insureds unable to fix Y2K;
- Boiler and machinery, surety, etc.

Non-proportional treaty reinsurance introduces a unique concern. An issue of considerable importance to RRC is the aggregation of losses under the definition of Ultimate Net Loss. Under a limited and well defined number of circumstances, it may be appropriate to aggregate certain losses arising out of a single event. However, it would be a mistake to conclude that either Y2K in itself, or the wide-spread use of a two-digit date code, constitute one occurrence.

The view of RRC follows very closely that of the international reinsurance community; neither the turning of the clock nor the flipping of the calendar is, in itself, an insured or insurable peril. The arrival of the year 2000 will not be a fortuitous event, nor can it cause a Y2K loss. The decisions of individual professionals, directors, officers, programmers, technicians, contractors, felons, and other users and abusers of computers, represent separate events taking place over many years. As we reach the year 2000, one piece of software may cause an overheated furnace to start a building fire while another computer misdirects funds and a third halts a factory production line. These separate losses do not constitute a single occurrence under even the broadest treaty definition of event.

Such losses bear a relationship, of course. However, by way of comparison, they are related only in the same sense that woodstove fires in a given winter have a common cause – faulty installations. There are further, more complex issues of reinsurance coverage and loss aggregation, and cedants and reinsurers are encouraged to discuss openly and frankly their respective understanding of treaty intent and coverage. It is not the role of the Reinsurance Research Council to determine underwriting standards. However, the council will continue to correspond with reinsurers around the world in order to communicate effective solutions to the Canadian market.