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UNLESS ADOPTED AND ISSUED BY A LICENSED INSURER.**

MOTOR CARRIER PUBLIC LIABILITY ENDORSEMENT MENLO REFERENCE FORM

Menlo Form MENLO-CA-02 is an original document authored by Menlo Insurance Services. It corresponds to coverage commonly written on form MCS-90, which is referenced for identification only.

Various provisions in this form restrict coverage. Read the entire form carefully to determine rights, duties, and what is and is not covered. Throughout this form, the words “you” and “your” refer to the named insured shown in the declarations of the issuing policy, and the words “we”, “us”, and “our” refer to the insurer that adopts and issues this form. Other words and phrases that appear in quotation marks have the meanings given in the Definitions section at the end of this form.

A. Purpose and Attachment

1. This endorsement changes the auto liability policy to which it is attached so that the policy serves as evidence of the financial responsibility that federal law requires of regulated motor carriers. It parallels the subject matter of the federal public liability endorsement prescribed under 49 CFR Part 387;
 2. This endorsement creates rights in favor of members of the public who obtain a “final judgment” against the “insured”. It does not grant the “insured” any coverage, and it does not enlarge, restore, or add to the coverage the policy itself provides;
 3. This endorsement applies to the operation, maintenance, and use of “motor vehicles” within the United States of America and its territories and possessions, within Canada, and within Puerto Rico; and
 4. If any term of the policy conflicts with this endorsement as respects a judgment creditor’s rights under Section B., this endorsement controls. As between us and the “insured”, every term of the policy remains in force, as stated in Sections E. and F.
- negligence in operating, maintaining, or using a “motor vehicle” subject to the federal financial responsibility requirements of 49 CFR Part 387;
2. Our obligation under B.1. runs to the person or organization holding the “final judgment”. That obligation is not defeated, reduced, or delayed by:
 - a. any exclusion of the policy;
 - b. any condition of the policy, or the “insured’s” breach of any condition;
 - c. the absence of the involved “motor vehicle” from any schedule or description of covered autos in the policy;
 - d. any misrepresentation by the “insured” in obtaining the policy;
 - e. the “insured’s” insolvency, bankruptcy, or dissolution; or
 - f. any defense we could assert against the “insured” under the policy;
 3. Our obligation under B.1. applies whether the “motor vehicle” involved is owned, leased, hired, or borrowed by the “insured”, and wherever within the territory stated in A.3. the “accident” occurs;
 4. Our obligation under B.1. arises only when a judgment has become a “final judgment”. This endorsement obligates us to pay judgments. It does not obligate us to:

B. Our Obligation to Judgment Creditors

1. We will pay, up to the limits stated in Section D., each “final judgment” entered against the “insured” that awards damages for “public liability” and that rests on the “insured’s”

- a. defend the “insured” or any other person against any claim or suit;
 - b. pay any claim that has not been reduced to a “final judgment”;
 - c. pay prejudgment interest, costs, or attorney fees except to the extent the “final judgment” awards them as damages for “public liability” within the limits stated in Section D.; or
 - d. pay any punitive or exemplary award, unless the law of the state where the “final judgment” was entered requires a guarantor of financial responsibility to pay it;
5. This endorsement is a guarantee of last resort. If other insurance collectible by the judgment creditor, including coverage the policy itself provides, is sufficient to satisfy the “final judgment” up to the applicable limit in Section D., our separate obligation under this endorsement is not triggered. If that other insurance satisfies part of the “final judgment”, our obligation under this endorsement applies only to the unsatisfied remainder, subject to Section D.; and
6. Payment we make under this endorsement discharges the “insured’s” debt to the judgment creditor to the extent of the payment. It does not discharge, and instead creates, the “insured’s” debt to us described in Section E.

C. Losses Outside This Endorsement

1. This endorsement does not obligate us to pay any judgment for:
- a. “bodily injury” to, or the death of, an employee of the “insured” arising in the course of that person’s employment by the “insured”;
 - b. “property damage” to cargo or to any other property that the “insured” owns, transports, or holds in its care, custody, or control; or
 - c. damages of any kind that are not “public liability”;
2. The removals in C.1. limit only this endorsement. Whether the policy itself covers such a loss is determined by the policy without reference to this endorsement; and

3. This endorsement does not apply to any judgment based on an “accident” that occurs after the effective date of a cancellation carried out under Section G.

D. Limits of This Endorsement

1. The most we will pay under this endorsement for “public liability” arising from any one “accident” is the limit shown for this endorsement in the Declarations or in the schedule attached to this endorsement. That limit must equal or exceed the minimum level of financial responsibility that 49 CFR 387.9 prescribes for the “insured’s” operations and cargo;
2. The limit stated in D.1. applies to the total of all “final judgments” arising from any one “accident”, without regard to how many there are of the following:
- a. “motor vehicles” involved in the “accident”;
 - b. persons or organizations holding “final judgments”; or
 - c. claims made or suits brought;
3. Amounts paid to satisfy a “final judgment” under the policy’s own coverage, and amounts paid by other collectible insurance as described in B.5., reduce the amount we owe under this endorsement for the same “accident”; and
4. Nothing in this endorsement increases the Limits of Insurance stated in the Declarations for coverage the policy provides to the “insured”.

E. Reimbursement by the Insured

1. The “insured” must reimburse us, on our written demand, for:
- a. any payment we make under this endorsement that we would have had no obligation to make under the terms of the policy alone, disregarding this endorsement; and
 - b. any payment we make under this endorsement that results from the “insured’s” failure to comply with a term of the policy;
2. Reimbursement under E.1. includes the amount paid to the judgment creditor together with

interest we pay on the “final judgment” and the reasonable costs we incur in satisfying it;

3. The “insured” must pay each reimbursement demand not later than 30 days after receiving it. Amounts unpaid after that date bear interest at the highest rate the law of the state shown in the Declarations allows;
4. Our right to reimbursement does not depend on the policy remaining in force, on the “insured’s” solvency, or on any release the judgment creditor gives the “insured”; and
5. To the extent we pay under this endorsement, the “insured’s” rights of recovery against any person or organization for the “accident” transfer to us. After the “accident”, the “insured” must not impair those rights, and must help us enforce them, including signing documents and testifying at our request.

F. Relationship to the Policy

1. As between us and the “insured”, all terms, conditions, exclusions, limits, and duties of the policy remain unchanged and fully enforceable. This endorsement suspends no policy defense except as against a judgment creditor under Section B.;
2. Whether a loss is covered for the “insured” is determined solely by the policy. Payment we make under this endorsement is not an admission, and creates no inference, that the policy covers the loss;
3. The premium for the policy reflects the obligation this endorsement creates. The “insured” must give us, on request, the information about its operations, cargo, vehicles, and drivers that we need to maintain any certification or filing federal law requires; and
4. If more than one endorsement of this kind is attached to policies issued to the “insured” by us or by others, recovery by a judgment creditor for any one “accident” must not exceed, in total, the highest applicable limit under any one of them, and each insurer’s share is determined by the filings made on the “insured’s” behalf.

G. Cancellation

1. We or the “insured” may cancel this endorsement by giving the other party written notice not later than 35 days before the date cancellation takes effect. The 35 day period is counted from the date the notice is received, not the date it is sent;
2. Cancellation of the policy cancels this endorsement, but only if the notice and timing requirements of G.1. are also satisfied as to this endorsement;
3. If a certificate or filing evidencing this endorsement has been submitted to a federal or state agency on the “insured’s” behalf, our obligation to judgment creditors under Section B. continues for “accidents” occurring before the date the agency’s rules make the cancellation of that filing effective, even if that date is later than the date determined under G.1.; and
4. Cancellation does not affect our obligation under Section B. for any “accident” occurring before the effective date of cancellation, and does not affect the “insured’s” reimbursement duties under Section E. for any payment we make on account of such an “accident”.

H. Definitions

1. “Accident” includes continuous or repeated exposure to the same conditions that results in “bodily injury” or “property damage” the “insured” neither expected nor intended;
2. “Bodily injury” means physical injury, sickness, or disease that a person sustains, and death that results from it;
3. “Environmental restoration” means restoring, repairing, or replacing natural resources, including air, water, land, plant life, and animal life, that are damaged or destroyed as a result of an unintended release, during transportation, of commodities the “insured” is carrying, and includes the cost of removing, containing, and disposing of the released commodities and the contaminated resources;
4. “Final judgment” means a money judgment of a court of competent jurisdiction that has been entered against the “insured” and that is no longer subject to appeal, whether because the time to appeal has expired, appeals have been

exhausted, or the right to appeal has been waived;

5. "Insured" means the motor carrier named in the Declarations as the named insured;
6. "Motor vehicle" means a self propelled vehicle, and any trailer or semitrailer drawn by it, designed for use on public highways to transport property, and subject to the financial responsibility requirements of 49 CFR Part 387 as applied to the "insured's" operations;
7. "Property damage" means injury to or destruction of tangible property, including the resulting loss of its use; and
8. "Public liability" means liability of the "insured" for "bodily injury", for "property damage", or for "environmental restoration", owed to persons or organizations other than those described in C.1.a. and C.1.b.

Important Notice

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