KDE - 5096/4 10/1/92 - 10/1/93

N17598

Form A.C.E. No. 004-11/91

Policy No. KDE-5096/4

# A.C.E. INSURANCE COMPANY (Bermuda), LTD.

("Insurer")

Producer: BOWRING (BERMUDA) LIMITED

In favor of: HM ANGLO-AMERICAN LTD.

Address: 99 Wood Avenue South, Iselin, NJ 08830

Type of Coverage: EXCESS LIABILITY

In the amount as stated in Item 2 of the Declarations.

SEE REVISED POLICY FORM ENDORSEMENT

Term: ~~Beginning at 12:01 A.M. on the day of 19 ("Inception Date")~~

prevailing time at the address of the Named Insured and in accordance with the terms and conditions of the form(s) attached.

PREMIUM $1,175,000

IN WITNESS WHEREOF, this Policy has been made, entered into and executed by the undersigned in Hamilton, Bermuda this 14th day April, 1993

By: Mark Lima

Mark Lima

Title: Underwriter

JR

End.66-1/93
Form 003

ADDITIONAL/RETURN PREMIUM $ NIL

**REVISED POLICY FORM ENDORSEMENT**
**(Prior Policy Form)**

In consideration of the premium charged, it is agreed and acknowledged that this Policy is changed as of the effective date set forth below ("Effective Date") by cancelling the Policy form (including endorsements) to which this Endorsement is attached ("Old Policy Form") and issuing the revised Policy form 004-11/91 (including revised endorsement forms) ("New Policy Form").

Coverage under this Policy for all occurrences notice of which shall have been given by the Named Insured to the Company prior to the Effective Date shall be governed by the Old Policy Form. Coverage under this Policy for all occurrences notice of which shall be given by the Named Insured to the Company on or after the Effective Date shall be governed by the New Policy Form.

Except as may be agreed to by the Company in writing or as provided below, the Inception Date of this Policy (for purposes of the definition of "occurrence") shall be 9th January, 19 86. No action of the Company in issuing this endorsement and/or the New Policy Form (004-11/91) shall in any way alter or amend the inception date for coverage afforded under the Old Policy Form. Notwithstanding the foregoing, if:-

a. before the Effective Date, the manager or equivalent level employee of the risk management, insurance or law department or any executive officer of any Insured had knowledge or notice that (i) an event or exposure to conditions had commenced, or (ii) personal injury or property damage caused by use of the Insured's goods or products had taken place in whole or in part, whether or not such person was aware that such occurrence was likely to involve this Policy, and

b. the Old Policy Form would not have covered such occurrence if notice thereof would have been given to the Company immediately prior to the Effective Date,

the Inception Date with respect to such occurrence shall be the Effective Date and the New Policy Form shall not afford any coverage with respect thereto.

Notwithstanding anything herein or in the Old Policy Form or the New Policy Form to the contrary, no occurrence shall be covered under both the Old Policy Form and the New Policy Form.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1992
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096
of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 14th April, 1993

By [signature]
AUTHORISED REPRESENTATIVE JR

End No. 9

GLD055623
0049-GLD-000055623

Form A.C.E. No. 004-11/91

**THIS IS AN OCCURRENCE (AS DEFINED HEREIN) FIRST REPORTED POLICY WITH AN OPEN-END DISCOVERY PERIOD (IF PURCHASED) ON THE TERMS AND CONDITIONS SET FORTH HEREIN**

## EXCESS LIABILITY INSURANCE

## DECLARATIONS

**Item 1** (a) Named Insured: HM ANGLO-AMERICAN LTD.

(b) Address of Named Insured: 99 Wood Avenue South, Iselin, NJ 08830

**Item 2** Limit of Liability:

(a) Limit in respect of each occurrence: $200,000,000

(b) Annual period limit in the aggregate for all covered occurrences: $200,000,000

(c) *Per Occurrence Retention Amount: See Attached Schedule*

**Item 3** Policy Inception Date: See Revised Policy Form Endorsement

First Annual Period Expiration Date: 1st October, 1993

**Item 4** *Currency:* United States Dollars

**Item 5** Representative of Named Insured: Bowring (Bermuda) Limited

**Item 6** Notice: **ACE Insurance Company (Bermuda), Ltd.**
The ACE Building
30 Woodbourne Avenue
Hamilton HM 08, Bermuda
(809) 295-5221 telecopy
3543 ACEIL BA telex

**Item 7** Applicable Initial Endorsements

Revised Policy Form Endorsement Per Occurrence Retention Schedul

Subsidiary Retroactive Coverage Endorsement

Proration of Related Losses for Related Insureds

Additional Insured and Exclusion for Designated Exposures

Said insurance is subject to the provisions, stipulations, exclusions and conditions contained in this form and the representations and warranties of the Named Insured contained in the Named Insured's initial and extension applications for this policy of insurance, which are hereby made a part of said insurance, together with other provisions, stipulations, exclusions and conditions as may be endorsed *on said policy or added thereto as therein provided (collectively hereinafter referred to as the "Policy").*

Form A.C.E. No. 004-11/91

# EXCESS LIABILITY POLICY
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# EXCESS LIABILITY POLICY

Named Insured: As stated in Item 1 of the Declarations forming a part hereof (hereinafter called the "Named Insured").

Insurer: As stated in the cover page forming a part hereof (hereinafter called the "Insurer").

## INSURING AGREEMENTS

### I. COVERAGE

The Insurer hereby agrees, subject to the limitations, terms, exclusions and conditions hereinafter mentioned, to indemnify the Insured for all sums which the Insured shall be obligated to pay by reason of liability imposed upon the Insured by law or assumed under contract or agreement by the Insured for damages on account of—

(1) personal injury,

(2) property damage or

(3) advertising liability

anywhere in the universe, resulting from:

**Coverage (A):** an occurrence (as defined herein), notice of which shall have been given by the Named Insured to the Insurer prior to the expiration of this Coverage A in accordance with Section (d) of Article V (Conditions) hereof ("Coverage A"); or

**Coverage (B):** an occurrence (as defined herein), notice of which shall have been given by the Named Insured to the Insurer during the Discovery Period in accordance with Section (d) of Article V (Conditions) hereof ("Coverage B"), but only if the Named Insured shall have elected to obtain Coverage B pursuant to Section (u) of Article V (Conditions) hereof (or if a former subsidiary, affiliate or associated company of the Named Insured shall have Coverage B by virtue of Section (w) of Article V (Conditions) hereof);

provided, however, that the aggregate limit, the per occurrence limit, the per occurrence retention, and the terms, conditions and exclusions of coverage shall be determined under the Policy as in effect at the time notice of the occurrence for which coverage is asserted is first given pursuant to Section (d) of Article V (Conditions) hereof.

### II. LIMIT OF LIABILITY

(a) Subject to all the provisions hereof, the Insurer shall be liable only for that amount of ultimate net loss for each occurrence covered pursuant to Article I hereof in excess of the greater of either:

(1) the amount of the stated per occurrence limits without regard to their reduction, exhaustion or impairment in whole or in part (hereinafter called the "underlying limits"), of the underlying insurances and self-insured retentions listed or which should have been listed on the present and/or any prior Schedule B hereto, as to which the Insurer and the Named Insured expressly agree that the insurance provided by this Policy shall (A) be in excess in respect of such occurrences covered by said underlying insurances, (it being understood that this Policy shall in no way be subject to, or affected by, the terms,

conditions, or limitations of said underlying insurances), and (B) apply only as if such underlying insurances were fully available and collectable for all occurrences covered thereunder,

or

(2) the per occurrence retention amount set forth in Item 2(c) of the Declarations,

and then only up to a further sum as stated in Item 2(a) of the Declarations in respect of each occurrence—subject to the limit as stated in Item 2(b) of the Declarations in the aggregate for each annual period for all occurrences covered hereunder of which notice is first given during such annual period (or during the Discovery Period with respect to the immediately preceding annual period or portion thereof)—irrespective of the period over which the losses, injuries, damages or liabilities occur or the number of such losses, injuries, damages or liabilities.

(b) The inclusion or addition hereunder of more than one Insured shall not operate to increase the Insurer's limits of liability beyond those set forth herein.

## III. DEFINITIONS

This Policy is subject to the following definitions:

*(a)* ***Insured***

(1) The unqualified word "Insured," wherever used in this Policy, means:

(A) the Named Insured, and, if the Named Insured is designated in Item 1 of the Declarations as a partnership or joint venture, the partnership or joint venture so designated and each partner or member thereof but only with respect to his liability as such;

(B) (i) any subsidiary or affiliate of the Named Insured for any annual period whose accounts as of the date of the financial statements of the Named Insured submitted to the Insurer most recently prior to the rating of the premium for such annual period (x) are consolidated in the financial statements of the Named Insured in accordance with generally accepted accounting principles in the United States of America (or, in the case of any foreign Named Insured, any subsidiary or affiliate whose accounts would be consolidated in the financial statements of such Named Insured if such accounts would have been consolidated in accordance with generally accepted accounting principles in the United States of America), or (y) were eligible for such consolidation and whose financial statements were submitted to the Insurer with such financial statements of the Named Insured; and/or (ii) any subsidiary, affiliate or associated company of the Named Insured listed on Schedule A hereto;

(C) any present or former officer, director, stockholder or employee of any person or entity named in paragraph (A) or (B) above or (F) below, but only with respect to liability for acting within the scope of his duties as such an officer, director, stockholder or employee, and any organization or proprietor with respect to any liability for providing real estate management for any such person or entity named in paragraph (A) or (B) above or (F) below;

(D) any person, organization, trustee or estate to whom any person or entity named in paragraph (A) or (B) above or (F) below is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this Policy, but only to the extent of such obligation and only in respect of operations (other than commercial insurance operations) by or on behalf of such person or entity named in paragraph (A) or (B) above or (F) below or of facilities owned or used by such person or entity named in paragraph (A) or (B) above or (F) below;

(E) with respect to any automobile owned by any person or entity named in paragraph (A) or (B) above or (F) below or hired for use on behalf of any such person or entity, or to any aircraft owned by or hired for use on behalf of any such person or entity, any person or organization legally responsible for the use thereof, provided the actual use of the automobile or aircraft is with the permission of such person or entity. The insurance extended by this paragraph (E), with respect to any person or organization other than any such person or entity, shall not apply:

(i) to any manufacturer of aircraft, aircraft engines, or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents with respect to any occurrence arising out of such activities of the Insured;

(ii) with respect to any hired aircraft, to the owner thereof or any employee of such owner; and

(iii) with respect to any non-owned aircraft, to any officer, director, stockholder, partner or employee of any person or entity named in paragraph (A) or (B) above if such aircraft is owned in full or in part by him or a member of his household;

(F) any joint venture, co-venture, joint lease, joint operating agreement or partnership (hereinafter called "Joint Venture") in which any person or entity named in paragraph (A) or (B) above has an interest, but only if and to the extent that (i) such person or entity is obligated to provide insurance for the Joint Venture such as is afforded by this Policy; or (ii) the Joint Venture is listed on Schedule A.

(2) It is hereby understood and agreed by each Insured and the Insurer that, as regards any liability of an Insured which arises in any manner whatsoever out of operations or the existence of a Joint Venture in which such Insured has an interest, the liability of the Insurer under this Policy shall be limited to the Insured's liability arising out of such Joint Venture and that the total limit of liability insurance afforded such Insured by this Policy shall be available with respect thereto. It is further understood and agreed that the liability of the Insurer under this Policy shall be excess of (i) the sum specified in Item 2(c) of the Declarations with respect to the Insured's liability arising out of such Joint Venture or (ii) the limits of the underlying insurance(s) (as reduced by any special provisions relating to Joint Ventures, if applicable), whichever is the greater.

(3) It is agreed to automatically include as an Insured without listing on Schedule A hereto or adjustment of premium under this Policy for any annual period any entity acquired or formed by or merged with an Insured (a "Potential Additional Insured") during such annual period *provided that* (a) the fair value of the sum of all cash, securities, assumed indebtedness and other consideration expended by all Insureds for any such acquisition, formation or merger or series of interrelated acquisitions, formations or mergers does not exceed 5% of the total assets of the Named Insured and its consolidated subsidiaries and affiliates as most recently reported to the Insurer for rating purposes prior to such annual period, (b) the incremental annual gross revenues attributable to such acquisition, formation or merger or series of interrelated acquisitions, formations or mergers do not exceed 5% of the total annual gross revenues of the Named Insured and its consolidated subsidiaries and affiliates as most recently reported to the Insurer for rating purposes prior to such annual period, and (c) neither the operations of the Potential Additional Insured prior to such acquisition, formation or merger or series of interrelated acquisitions, formations or mergers nor the resultant combined or consolidated operations of such Insured and the Potential Additional Insured subsequent to such acquisition, formation or merger or series of interrelated acquisitions, formations or mergers are materially different from those of such Insured prior to such acquisition, formation or merger or series of interrelated acquisitions, formations or mergers. Unless notice to the Insurer shall have been given and additional premium, if any, shall have been paid in respect of any acquisition, formation or merger or series of interrelated

acquisitions, formations or mergers not meeting the criteria set forth herein, such Potential Additional Insured shall not be an Insured hereunder. With respect to any occurrence giving rise to liability of any Potential Additional Insured that qualifies to be an Insured hereunder, the Inception Date shall be the date of merger with or acquisition or formation of the Potential Additional Insured by an Insured or such other date as may be agreed between the Named Insured and the Insurer. If during any annual period an Insured acquires a business, division or other operations by asset acquisition, such asset acquisition shall be considered an acquisition of an entity for purposes of this subsection (3).

(b) **Personal Injury**

The term "personal injury", wherever used in this Policy, means bodily injury (including death at any time resulting therefrom), mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination, humiliation, all libel, slander or defamation of character or invasion of rights of privacy, and any other similar type of injury.

(c) **Property Damage**

The term "property damage", wherever used in this Policy, shall mean (1) physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom, (2) loss of use of tangible property which has not been physically injured or destroyed, or (3) evacuation losses arising from actual or threatened physical injury to or destruction of tangible property or bodily injury.

(d) **Advertising Liability**

The term "advertising liability," wherever used in this Policy, shall mean liability for damages on account of:

(1) libel, slander or defamation;

(2) any infringement of copyright or of title or of slogan;

(3) piracy or misappropriation of ideas under an implied contract;

(4) any invasion of right of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities.

(e) **Occurrence**

The term "occurrence," wherever used in this Policy, shall mean:

(i) an event or a continuous, intermittent or repeated exposure to conditions which causes, allegedly causes or is deemed to cause personal injury or property damage or gives rise to advertising liability, which event or conditions commence at or subsequent to the Inception Date and prior to the expiration of Coverage A, or

(ii) use of the Insured's products which causes, allegedly causes or is deemed to cause personal injury or property damage taking place prior to the expiration of Coverage A and, except as specifically agreed by the Insured and the Insurer, at or subsequent to the Inception Date,

and which personal injury, property damage or advertising liability is neither expected nor intended by the Insured. Where certain actual or alleged personal injury, property damage or advertising liability is expected or intended by the Insured or the Insured has historically experienced a level or rate of actual or alleged personal injury, property damage or advertising liability associated with given products or operations and actual or alleged personal injury, property damage or advertising liability fundamentally different in nature or vastly greater in order of magnitude occurs, such actual or alleged personal injury, property damage or *advertising liability shall not* by *virtue of such expectation, intent* or *historical experience* be deemed expected or intended to the extent and only to the extent it is different or incrementally greater.

(f) **Occurrence Integration**

For the purposes of this Policy, where a series of and/or several actual or alleged losses, injuries, damages or liabilities occur which are attributable directly, indirectly or allegedly to the same actual or alleged event, condition, cause, defect or hazard or failure to warn of such, *all such actual or alleged losses, injuries*, damages or liabilities shall be added together and the total amount of such losses, injuries, damages or liabilities shall be treated as one occurrence irrespective of the period or area over which the actual or alleged losses, injuries, damages or liabilities occur or the number of such actual or alleged losses, injuries, damages or liabilities. So far as losses, injuries, damages or liabilities resulting or alleged to result from the design, formulation, manufacture, distribution, use, operation, maintenance or repair of an Insured's product or the failure to warn as to the use, operation or maintenance of an Insured's product, the term "the same actual or alleged event, condition, cause, defect or hazard or failure to warn of such" shall mean any such design, formulation, manufacture, distribution, use, operation, maintenance, repair or failure to warn, as the case may be, as to which such losses, injuries or damages are directly, indirectly or allegedly attributable.

(g) **Damages**

The term "damages", wherever used in *this Policy*, shall mean *all* forms of compensatory damages, monetary damages, statutory damages and punitive or exemplary damages and costs of compliance with equitable relief (other than governmental or criminal fines or penalties), and legal expense or other costs which the Insured shall be obligated to pay by *reason of judgment (or, where applicable, settlement)* for *liabilities on account of personal* injury, property damage and advertising liability including, but not limited to, hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fee charges and law costs, premiums on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses and investigations and other persons, and for litigation (including, but not limited to, attorneys' fees and disbursements), settlement, adjustment, and investigation of claims and suits which are paid as a consequence of an occurrence covered hereunder, excluding only the salaries, wages and benefits of the Insured's employees.

(h) **Ultimate Net Loss**

The term "ultimate net loss", wherever used in this Policy, shall mean the total sum which the Insured (or an underlying insurer) shall become obligated to pay in respect of any one occurrence for damages on account of personal injury, property damage or advertising liability, *either through* adjudication *or* (subject to Section (g) of Article V (Conditions) hereof) compromise.

(i) **Automobile**

The term "automobile," wherever used in this Policy, shall mean a land motor vehicle, trailer or semi-trailer.

(j) **Watercraft**

The term "watercraft", wherever used in this Policy, shall mean any ship or vessel of whatever type, including, but not limited to, cargo vessels, passenger vessels, other vessels *used* for transport, towboats or barges, vessels used in the construction of pipelines, platforms or other facilities, storage vessels, tanker vessels, drill ships, drilling rigs and barges (including, without limitation, submersible drill rigs and barges, semi-submersible drill rigs and barges and self-*elevating drill rigs and barges)* and *all other* vessels of whatever nature and description, all whether or not self-propelled but shall not include an offshore oil or gas platform secured in place for drilling and/or producing operations.

(k) **Aircraft**

The term "aircraft," wherever used in this Policy, shall mean any heavier than air or lighter than air aircraft, missile or spacecraft.

(l) **Annual Period**

The term "annual period", wherever used in this Policy, shall mean (i) with respect to the first annual period, the period commencing at the Inception Date and expiring on the First Annual Period Expiration Date set forth in Item 3 of the Declarations, (ii) the one (1) year period commencing at the First Annual Period Expiration Date or each anniversary thereof, or (iii) with respect to Coverage B, the one (1) year period commencing at the expiration of Coverage A or each anniversary date and time of such expiration.

(m) **Discovery Period**

The term "Discovery Period," wherever used in this Policy, shall mean the period, if applicable, commencing upon the expiration of Coverage A of this Policy and ending on the date provided in Section (u) or (w) of Article V (Conditions) hereof.

(n) **Product Liability**

The term "product liability," wherever used in this Policy, shall mean liability for personal injury or property damage arising out of the end-use of goods or products manufactured, sold, tested, handled or distributed by the Insured or others trading under its name if such use occurs after possession of such goods or products has been relinquished to others by the Insured or by others trading under its name and if such use occurs away from premises owned, rented or controlled by the Insured; provided such goods or products shall be deemed to include any container thereof other than a vehicle, watercraft or aircraft.

(o) **Insured's Products**

The term "Insured's products", wherever used in this Policy, shall mean goods or products manufactured, sold, tested, handled or distributed by the Insured or others trading under its name or materials that were the subject of completed or abandoned operations of the Insured.

## IV. EXCLUSIONS

This Policy shall not apply to, and the Insurer shall have no liability hereunder to the Insured in respect of the following:

(a) any liability or alleged liability for personal injury, property damage or advertising liability resulting from an occurrence where some or all of the personal injury, property damage or advertising liability resulting from such occurrence is, or but for the issuance of this Policy would be, covered by insurance issued to the Insured other than insurance listed or which should have been listed on the present and/or any prior Schedule B hereto.

(b) any obligation for which the Insured or any company as its insurer may be held liable under any unemployment compensation or disability benefits law or the Longshoremen's and Harbor Workers' Compensation Act; provided, however, that this exclusion does not apply to liability of others assumed by the Insured under contract or agreement or to liability arising under the Federal Employers' Liability Acts, or the Jones Act.

(c) liability or alleged liability for property damage arising or alleged to arise out of any act, error or omission in the rendering of professional services, other than architectural and engineering services (which are nonetheless subject to the other exclusions herein, including, without limitation, exclusion (e) below), *including, but not limited to, the rendering of legal, accounting,* data processing, consulting, or investment advisory services.

(d) property damage to:

(1) property owned or occupied by or rented to the Insured;

(2) property loaned to the Insured;

(3) personal property in the care, custody or control of the Insured; or

(4) that particular part of real property or fixtures on which the Insured or any contractors or subcontractors working directly or indirectly on behalf of the Insured are performing operations, if such property damage arises out of such operations;

provided, however, that subsections (2), (3) and (4) of this exclusion (d) do not apply to liability assumed under a sidetrack agreement.

(e) liabilities or alleged liabilities of the Insured:

(1) resulting from or alleged to result from the failure of the Insured's products or work completed by or on behalf of the Insured to meet any warranty or representation by the Insured as to the level of performance, quality, fitness or durability or perform the function or serve the purpose intended by the Insured to the extent that such liability or alleged liability from such failure relates to the diminished value or economic utility of the Insured's products or work completed by or on behalf of the Insured;

(2) on account of property damage to any portion or section of the Insured's products or of work performed by or on behalf of the Insured, if such property damage arises out or is alleged to arise out of that portion of such products or that section of work, or out of materials, parts or equipment furnished in connection therewith;

(3) for the withdrawal, inspection, repair, replacement, or, in connection with any of the foregoing, loss of use of the Insured's *products or work completed by or for the Insured* or of any property of which such products or work form a part.

(f) with respect to advertising activities, liabilities or alleged liabilities of the Insured for:

(1) breach of contract, *but this shall not relate to claims for unauthorized appropriation of* ideas based upon alleged breach of an implied contract;

(2) infringement of registered trademarks, service mark or trade name by use thereof as the registered trademark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans;

(3) mistake in advertised price; or

(4) the failure of goods, products or services to conform to advertised quality or performance.

(g) except in respect of personal injury or property damage taking place in and caused by events or conditions occurring in the land area of the United States of America, its territories or possessions or Canada, any personal injury, property damage or advertising liability directly *or indirectly occasioned by, happening through* or in consequences of war, invasion, hostile action of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

(h) personal injury, property damage or advertising liability arising out of, or alleged to arise out of, the manufacture and/or distribution and/or sale and/or installation and/or utilization and/or ingestion or inhalation of, or exposure to, as the case may be, products manufactured, distributed, sold or installed by the Insured containing or consisting of asbestos fibers, tobacco or tobacco products, 2,4,5 trichlorophenoxyacetic acid ("2,4,5-T"), asbestiform talc, diethylstilbestrol ("DES") or any intra-uterine device ("IUD"); provided, however, that this exclusion shall not apply to personal injury or property damage caused by an occurrence where such personal injury or property damage is not related to the asbestos, tobacco or other consumed portion of a tobacco product, 2,4,5-T, asbestiform talc, DES or IUD content or nature of the product or completed operations. The listing of products herein shall not give rise to an inference that personal injury, property damage or advertising liability attributable to other products was neither expected nor intended by the Insured.

(i) any liability or alleged liability for damages arising out of, or alleged to arise out of, the design, manufacture, construction, maintenance, service, use or operation of any aircraft, or any component part or equipment thereof, or any other airplane navigational or aviation related equipment; provided, however, that this exclusion shall not apply to any liability or alleged liability in respect of:

(1) aircraft operated or used by the Insured for purposes other than commercial airline operations;

(2) the processing, distribution, sale, storage, transportation or handling of aircraft fuel, or aircraft refueling and related operations;

(3) any part, equipment or item of goods incorporated into an aircraft if such part, equipment or item of goods is of a type and grade sold by the Insured principally for purposes other than use in aircraft or aviation;

(4) any part, equipment or item of goods intended by the Insured to be a component part of an aircraft where such part, equipment or item of goods has not yet been incorporated into an aircraft; or

(5) aircraft for which the Insured provides financing (including lease financing), provided neither the Insured nor any affiliate, agent or representative of the Insured maintains, services, operates or uses the aircraft or is obligated by virtue of a written contract or agreement to maintain or service the aircraft.

(j) any liability or alleged liability for personal injury, property damage or advertising liability in any manner arising out of or alleged to arise out of the design, construction, maintenance, sale, manning, ownership or operation of any watercraft, including, by way of illustration but not by limitation, liability arising out of or alleged to arise out of any collision, explosion, fire, sinking or debris involving watercraft, liabilities arising out of or alleged to arise out of the discharge, dispersal, release or escape of cargo, ballast, fuel, pollutants or any other matter from any watercraft, or any liability of the Insured arising under or alleged to arise under the terms of the International Convention on Civil Liability for Oil Pollution Damage, including any amendments or supplemental agreements thereto or extensions thereof, and any future conventions (as amended, supplemented or extended) of a similar nature or purpose which are applicable to watercraft; provided, however, that this exclusion shall not apply:

(1) to watercraft or risks listed on Schedule C hereto,

(2) during any annual period to the greater of: (i) the first two watercraft not listed on Schedule C acquired in the ordinary course of business during such annual period of a similar type, size and use as vessels listed on Schedule C, or (ii) the first such acquired watercraft of any similar type, size and use whose aggregate gross registered tonnage shall not exceed 5% of the aggregate gross registered tonnage of vessels of such type, size and use listed on Schedule C;

(3) to watercraft less than 75 feet in length, or

(4) to loading or unloading of any watercraft at premises owned, leased or controlled by the Insured.

(k) (1) (A) except as provided in subsection (2) below, any liability or alleged liability of the Insured for personal injury, property damage or advertising liability arising out of or alleged to arise out of the discharge, dispersal, release, or escape of pollutants into or upon land or other real estate, the atmosphere, any watercourse or body of water whether above or below ground or otherwise into the environment; or

(B) any liability or alleged liability, loss, cost or expense of the Insured arising out of any direction or request, whether governmental or other, that the Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

(C) It is understood and agreed that this exclusion shall apply whether or not the discharge, dispersal, release or escape:

(i) results from the Insured's activities or the activities of any other person or entity;

(ii) is sudden, gradual, accidental, foreseeable, expected or fortuitous (except as provided in subsection (2) below).

(2) (A) The exclusion set forth in subsection (1) above does not apply to any liability of the Insured (i) for product liability; or (ii) for personal injury or property damage caused by an occurrence constituting discharge, dispersal, release or escape of pollutants but only if the Insured becomes aware of the commencement of the discharge, dispersal, release or escape within seven (7) days of such commencement and complies with the special notice provisions of paragraph (B) of this subsection (2).

(B) Notwithstanding anything in this Policy to the contrary, the Insurer shall not be liable to the Insured by virtue of paragraph (2)(A)(ii) of this Section (k) unless the Named Insured provides the Insurer with notice in writing of the commencement of such discharge, dispersal, release or escape within forty (40) days of such commencement. The Insured shall otherwise comply with all the conditions set forth in this Policy.

As used in this Policy, the term "pollutant" shall mean any solid, liquid, gaseous or thermal irritant, contaminant or toxic or hazardous substance or any substance which may, does, or is alleged to affect adversely the environment, property, persons or animals, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes, without limitation, materials to be recycled, reconditioned or reclaimed.

(l) liability or alleged liability for:

(1) personal injury, property damage or advertising liability in the United States, its territories or possessions, Puerto Rico or the Canal Zone (A) with respect to which an Insured under the Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability or (B) resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof, or (ii) the Insured is, or had this Policy not been issued, would be entitled to indemnity from United States of America or any agency thereof under any agreement entered into by the United States of America or any agency thereof with any person or organization;

(2) medical or surgical relief or expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising

out of the operation of a nuclear facility by any person or organization in the United States, its territories or possessions, Puerto Rico or the Canal Zone;

(3) injury, sickness, disease, death or destruction resulting from hazardous properties of nuclear material, if (A) the nuclear material (i) is at a nuclear facility owned by or operated by or on behalf of an Insured in the United States, its territories or possessions, Puerto Rico or the Canal Zone or (ii) has been discharged or dispersed therefrom, (B) such nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed by or on behalf of an Insured in the United States, its territories or possessions, Puerto Rico or the Canal Zone or (C) the injury arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of a nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this clause (3)(C) applies only to injury to or destruction of property at such nuclear facility.

(4) As used in this Policy:

(A) "hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material," "special nuclear material" and "by-product material" have the meanings given them by the Atomic Energy Act of 1954 or in law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (i) containing by-product materials and (ii) resulting from the operation by a person or organization of nuclear facility included within the definition of nuclear facility under clauses (B)(i) or (B)(ii) (below):

(B) "nuclear facility" means

(i) any nuclear reactor;

(ii) any equipment or device designed or used for (x) separating isotopes of uranium or plutonium, (y) processing or utilizing spent fuel, or (z) handling, processing or packaging waste.

(iii) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at such premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or combination thereof or more than 250 grams of uranium 235;

(iv) any structure, basin, excavation, premises or place prepared for the storage or disposal of waste.

(C) "Nuclear facility" includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

(D) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain critical mass of fissionable material.

(E) With respect to destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property or loss of use thereof.

(m) liability or alleged liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity outside the United States, its territories or possessions, Puerto Rico or the Canal Zone from any nuclear fuel or from any nuclear waste from the combustion, fission or fusion of nuclear fuel.

(n) (1) any liability or alleged liability arising out of or alleged to arise out of any negligent act, error or omission of the Insured, or any other person for whose acts the Insured is legally liable, in the administration of the Insured's Employee Benefits Programs, as defined in subsection (2) below, including, without limitation, liability or alleged liability under the Employee Retirement Income Security Act of 1974, as amended, or any similar statutory law or common law.

(2) As used in this Section (n), the term "Employee Benefits Programs" means group life insurance, group accident or health insurance, profit sharing plans, pension plans, employee stock subscription plans, workers' compensation, unemployment insurance, social benefits, disability benefits, and any other similar employee benefits.

(3) As used in this Section (n), the unqualified word "administration" means any of the following acts if such acts are authorized by the Insured:

(A) giving counsel to employees with respect to the Employee Benefits Programs;

(B) interpreting the Employee Benefits Programs;

(C) handling of records in connection with the Employee Benefits Programs; and/or

(D) enrolling, terminating or cancelling employees under the Employee Benefits Programs.

(o) any personal injury, property damage or advertising liability asserted in any claim, action, investigation or proceeding, including, without limitation, any private lawsuit (legal, equitable or otherwise) or proceeding, any derivative or class action commenced by shareholders of an Insured or any action, investigation or proceeding brought by any governmental department, agency or other body, arising or alleged to arise under any law, rule or regulation, whether established pursuant to legislative, administrative, judicial, executive or other authority, of any nation or federal, state, local or other governmental or political body or subdivision thereof relating to:

(1) the purchase, sale or distribution of securities or offers to purchase or sell securities, or investment counselling or management, including, without limitation, liability under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, the Investment Advisors Act of 1940, and the so-called "blue-sky" laws of the various states or other jurisdictions;

(2) antitrust or the prohibition of monopolies, activities in restraint of trade, unfair methods of competition or deceptive acts and practices in trade and commerce including, without limitation, the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act and the Hart-Scott Rodino Antitrust Improvements Act;

(3) fraud or breach of fiduciary duty;

(4) criminal penalties;

(5) the failure to pay when due any governmental tax (including, without limitation, income, excise, property, value added and sales tax) or tariff, license fee or other governmental fee which is incidental to the conduct of business or any assessment, fine or penalty related thereto;

(6) copyright, patent or trademark infringement (other than advertising liability with respect to titles or slogans);

(7) any defect in or impairment to title to real property, including fixtures, whether or not owned by an Insured;

(8) disclosure or other regulation of sales of, and offers to sell, real property; or

(9) dishonesty of an employee, officer or director of an Insured or any claim against an employee, officer or director of an Insured by such Insured.

No inference shall be made from the express exclusion of liabilities in this Section (o) that this Policy would otherwise cover such liabilities or covers similar liabilities.

## V. CONDITIONS

This Policy is subject to the following conditions:

(a) **Premium**

Unless otherwise provided, the premium for each annual period under this Policy is a flat premium and is not subject to adjustment except as otherwise provided herein. The premium shall be paid to the Insurer.

(b) **Inspection**

The Insurer shall be permitted but not obligated to inspect the Insured's property and operations at any time. Neither the Insurer's right to make inspections nor the making thereof nor a report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others to determine or warrant that such property or operations are safe or are in compliance with any law, rule or regulation.

(c) **Cross Liability**

In the event of claims being made by reason of personal injury suffered by an employee of one Insured hereunder for which another Insured hereunder is or may be liable, then this Policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

In the event of claims being made by reason of damage to property belonging to any Insured hereunder for which another Insured hereunder is or may be liable, this Policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

*Nothing contained herein shall operate to increase the Insurer's limit of liability as set forth in* Item 2 of the Declarations.

(d) **Notice**

(1) Except as otherwise provided in the special notice provision of Section (k)(2)(B) of Article IV (Exclusions), if the manager or equivalent level employee of the risk management, insurance or law department or any executive officer of any Insured shall become aware of an occurrence likely to involve this Policy, the Named Insured shall as soon as practicable, as a condition precedent to the rights of any Insured under this Policy, give written notice containing particulars sufficient to identify the Insured and the occurrence and also such reasonably detailed information as the Insurer may request regarding the occurrence to the Insurer. Failure to provide such written notice as required herein shall result in a forfeiture of any rights to coverage hereunder.

(2) If any claim is made against any Insured likely to involve this Policy, the Named Insured shall, as a condition precedent to the rights of any Insured under the Policy, give written notice thereof to the Insurer as soon as practicable and shall promptly forward to the Insurer copies of any written claim, demand, notice, summons, complaint or other process received by the Insured or its representatives or agents. Failure to provide such written notice as required herein shall result in a forfeiture of any rights to coverage hereunder.

(3) All notices under any provision of this Policy shall be in writing and given by prepaid express courier, telex or telecopier properly addressed to the appropriate party. Notice to any Insured may be given to the Named Insured at the address as shown in Item 1 of the Declarations or to such other person as it shall designate in Item 5 of the Declarations. Notice to the Insurer shall be given to the party indicated in Item 6 of the Declarations. Notice given as above shall be deemed to be received and effective upon actual receipt thereof by the party or one day following the date such notice is sent, whichever is earlier.

(e) **Assistance and Cooperation**

The Insurer shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against an Insured, but the Insurer shall have the right and shall be given the opportunity to associate at its own expense with the Insured or the Insured's underlying insurers or both in the defense and control of any claim, suit or proceeding relative to any occurrence where the claim or suit involves, or appears reasonably likely to involve, the Insurer in which event the Insured and the Insurer shall cooperate in all things in the defense of such claim, suit or proceeding.

(f) **Appeals**

In the event the Insured or the Insured's underlying insurers elect not to appeal a judgment in excess of the underlying limits, the Insurer may elect to make such appeal at its own cost and expense and shall be liable for taxable costs and disbursements or interest on judgments incidental thereto, but in no event shall liability of the Insurer for ultimate net loss exceed the amount set forth in Item 2 of the Declarations for any one occurrence and in addition the cost and expense of such appeal and interest on judgments incidental thereto.

(g) **Loss Payable**

Liability under this Policy with respect to any occurrence shall not attach unless and until the Insured and/or the Insured's underlying insurer(s) shall have paid in legal currency the greater of the amount of the underlying limits or the retention amount set forth in Item 2(c) of the Declarations as provided in Section (a) of Article II hereof and, with respect to the Insured's liability on account of personal injury, property damage or advertising liability, unless and until the Insured's liability shall have been fixed and rendered certain either by final judgment against the Insured after actual trial or by settlement approved in writing by the Insurer. The Insured shall make a definite demand for payment for any amount of the ultimate net loss for which the Insurer may be liable under this Policy within twelve (12) months after the Insured shall have paid such amount. If any subsequent payments shall be made by the Insured on account of the same occurrence or claim, additional demands for payment should be made similarly from time to time. Such losses shall be due and payable by the Insurer within thirty (30) days after they are respectively demanded and proven in conformity with this Policy. If judgment is rendered, settlement is denominated or another element of damages is stated in a currency other than the applicable currency under Section (n) below, payment under this Policy shall be made in such applicable currency at the rate of exchange prevailing on the date the final judgment is rendered, the amount of the settlement is agreed upon or the other element of damages is due, respectively.

(h) **Representation**

The Named Insured or such other person as it shall designate in Item 5 of the Declarations shall represent the Named Insured and any and all Insureds hereunder in all matters under this Policy, including, without limitation, payment of premium, negotiation of the terms of renewal and/or reinstatement and the adjustment, settlement and payment of claims.

(i) **Other Insurance**

Subject to Article IV, Section (a) above, if other valid and collectable insurance with any other insurer (whether issued prior hereto, simultaneously herewith or subsequent hereto) is available to the Insured covering a loss covered by this Policy other than insurance which is listed on Schedule B as excess of a portion of the limits of this Policy, the insurance afforded by this Policy shall be in excess of and shall not contribute with such other insurance. Nothing herein shall be construed to make this Policy subject to the terms, conditions and limitations of other insurance. If this Policy shall be deemed to contribute to a loss with other insurance and such contribution arises in whole or part from the failure of the Named Insured to list such other insurance (whether issued prior hereto, simultaneously herewith or subsequent hereto) on Schedule B hereto in accordance with the instructions on such Schedule B, then the Named Insured shall indemnify the Insurer for the amount of any such contribution and this Policy shall provide coverage as if such other insurance had been so listed.

(j) **Subrogation**

Inasmuch as this Policy is "excess coverage", the Insured's right of recovery against any person or other entity cannot be exclusively subrogated to the Insurer. It is therefore, understood and agreed that in case of any payment hereunder, the Insurer will act in concert with all other interests (including the Insured) concerned in the exercise of such rights of recovery. The apportioning of amounts which may be so recovered shall follow the principle that any interests (including the Insured's) that shall have paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by them; the Insurer is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interests (including the Insured's) of which this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests (including the Insured's) concerned, in the ratio of their respective recoveries as finally settled.

(k) **Changes**

Notice to or knowledge possessed by any person shall not effect waiver or change in any part of this Policy or estop the Insurer from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part hereof, signed by the Insurer or its authorized representative.

(l) **Assignment**

Assignment of interest under this Policy shall not bind the Insurer unless and until consent is endorsed hereon.

(m) **Cancellation**

This Policy may be cancelled on a pro rata basis:

(A) at any anniversary date of this Policy by the Named Insured delivering prior written notice to the Insurer, or

(B) at any time by the Named Insured by delivering written notice to the Insurer stating when, not less than thirty (30) days from the date the notice is delivered, cancellation shall be effective, or

(C) except as provided in Section (u) below, at any time by the Insurer by delivering written notice to the Named Insured stating when, not less than ninety (90) days from the date the notice is delivered, cancellation shall be effective.

Except as may be specifically agreed by the Insurer, this Policy shall automatically cancel as of any anniversary date if the Insurer does not receive within five (5) business days following such anniversary date payment or proof of payment of the premium for the respective period commencing on such anniversary date.

(n) **Currency**

The premiums and losses under this Policy are payable in the currency set forth in Item 4 of the Declarations. Unless otherwise specified in such Item 4, the currency shall be United States dollars.

(o) **Arbitration**

Any dispute, controversy, or claim arising out of or relating to this Policy, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in Bermuda under the provisions of the Bermuda Arbitration Act of 1986, as amended.

Either party to the dispute, once a claim or demand on its part has been denied or remains unsatisfied for a period of twenty (20) calendar days by the other party, may notify the other party of its desire to arbitrate the matter in dispute and at the time of such notification the party desiring arbitration shall notify the other party of the name of the Arbitrator nominated by it. The other party who has been so notified shall within fourteen calendar days thereafter nominate an other Arbitrator and notify the party desiring arbitration of the name of such second Arbitrator. The two Arbitrators nominated by the parties shall within fourteen calendar days after the appointment of the second Arbitrator choose a third Arbitrator.

The Arbitrators shall fix, on giving a reasonable notice in writing to the parties involved, a time and place for the hearing in Bermuda and may prescribe procedural rules governing the course and conduct of the arbitration proceeding, including without limitation discovery by the parties.

The Arbitrators shall, within ninety calendar days following the conclusion of the hearing, render their decision on the matter or matters in dispute in writing and shall cause a copy thereof to be served on all parties thereto. In case the Arbitrators fail to reach a unanimous decision, the decision of the majority of the Arbitrators shall be deemed to be the decision of the Arbitrators.

Each party shall bear the expense of its own Arbitrator. The remaining joint costs of the arbitration shall be borne equally by the parties to such arbitration.

The decision of the Arbitrators shall be final and binding upon the parties and the parties hereby agree to exclude any right of appeal under Section 29 of the Arbitration Act of 1986 against any award rendered by the Arbitrators and further agree to exclude any application under Section 30(1) of the Arbitration Act of 1986 for a determination of any question of law by the Supreme Court of Bermuda.

All awards of the Board of Arbitration may be enforced in the same manner as a judgment or order from the Supreme Court of Bermuda and judgment may be entered pursuant to the terms of the award by leave from the Supreme Court of Bermuda.

The Insurer and the Insureds agree that in the event that claims for indemnity or contribution are asserted in any action or proceeding against the Insurer by any of the Insured's other insurers in any jurisdiction or forum other than that set forth in this Section (o), the Insured will in good faith take all reasonable steps requested by the Insurer to assist the Insurer in obtaining a dismissal of these claims (other than on the merits) and will, without limitation, undertake to the court or other tribunal to reduce any judgment or award against such other insurers to the extent that the court or tribunal determines that the Insurer would have been liable to such insurers for indemnity or contribution pursuant to this Policy. The Insureds shall be entitled to assert claims against the Insurer for coverage under this Policy, including, without limitation, for amounts by which the Insured reduced its judgment against such other insurers in respect of such claims for indemnity or contribution, in an arbitration between the

Insurer and the Insured pursuant to this Section (o); provided, however, that the Insurer in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this Policy and any other defenses (other than jurisdictional defenses) as it would have been entitled to raise in the action or proceeding with such Insurers.

(p) **Conflicting Statutes**

In the event that any provision of this Policy is unenforceable by the Insured under the laws of any State or other jurisdiction wherein it is claimed that the Insured is liable for any injury covered hereby, because of non-compliance with any statute therein, then this Policy shall be enforceable by the Insured with the same effect as if it complied with such statute.

(q) **Governing Law and Interpretation**

This Policy shall be governed by and construed in accordance with the internal laws of the State of New York (with the exception of Section (o) of this Article V, which shall be governed by and construed in accordance with the Bermuda Arbitration Act of 1986), except insofar as such laws may prohibit payment in respect of punitive damages hereunder and except insofar as such laws pertain to the issuance, delivery, renewal, nonrenewal or cancellation of policies of insurance or the regulation by the Insurance Department of the State of New York of insurers doing insurance business within the State of New York; provided, however, that the provisions, stipulations, exclusions and conditions of this Policy are to be construed in an evenhanded fashion as between the Insured and the Insurer; without limitation, where the language of this Policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant provisions, stipulations, exclusions and conditions (without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the Insured or the Insurer and without reference to parol evidence).

(r) **Liability of the Insurer**

The Named Insured and the Insured agree that the liability and obligations of the Insurer hereunder shall be satisfied from the funds of the Insurer alone and that the individual shareholders of the Insurer shall have no liability hereunder to the Named Insured or the Insured.

(s) **Policy Extension**

Coverage A of this Policy may be extended at the expiration of each annual period for another annual period, subject only to agreement between the Insurer and the Named Insured as to the applicable premium and such other terms and conditions as the Insurer and the Named Insured may mutually deem appropriate.

(t) **Reinstatement**

(1) At the time of each annual period extension, the aggregate limit of liability set forth in Item 2(b) of the Declarations shall, unless otherwise agreed by the Named Insured and the Insurer, automatically be reinstated with respect to covered occurrences of which notice is first given during the following annual period (but there shall be no automatic reinstatement in respect of the Discovery Period which, if applicable, is subject to the remaining limit for the preceding annual period). There shall be no separate premium charged for this automatic reinstatement in addition to that provided for in Section (s) above.

(2) If during the annual period the aggregate limit of liability set forth in Item 2(b) of the Declarations is or may be impaired by virtue of an occurrence(s) of which notice has been previously given during such annual period, the Named Insured may elect to reinstate

such aggregate limit of liability for the remainder of such annual period by giving the Insurer written notice of such election and paying to the Insurer within five (5) days after such notice of election an additional premium equal to the total premium paid by the Named Insured to the Insurer for such annual period ("Reinstatement Premium").

In the event the Named Insured makes such election, the aggregate limit of liability set forth in Item 2(b) of the Declarations shall be reinstated, as of the date written notice of such election is given and the additional premium is paid by the Named Insured to the Insurer ("Reinstatement Date"), with respect to all covered occurrences notice of which is given by the Named Insured to the Insurer during the period commencing on the Reinstatement Date and ending as of the expiration of such annual period ("Reinstatement Period") ; provided however the aggregate limit of liability shall not be reinstated with respect to any event, exposure to conditions or use of goods or products if the manager or equivalent level employee of the risk management, insurance or law department or any executive officer of any Insured had knowledge or notice on or before the Reinstatement Date that (i) such event or exposure to conditions had commenced, or (ii) personal injury or property damage caused by such use of goods or products had taken place in whole or in part.

Notwithstanding the foregoing, all payments under this Policy of ultimate net loss in respect of two or more series of and/or several losses, injuries, damages or liabilities which pursuant to Section (f) of Article III of this Policy are added together and treated as two or more occurrences notices of which are first given by the Named Insured to the Insurer during the annual period shall be subject to a single aggregate limit of liability equal to the amount stated in Item 2(b) of the Declarations. The foregoing sentence creates a sublimit which further limits the Insurer's liability and does not increase the Insurer's maximum liability under this Policy.

If during the Reinstatement Period (i) the Named Insured shall not give notice to the Insurer of any occurrence or (ii) such notice is given but the Insurer makes no payment during the Reinstatement Period of any ultimate net loss in respect of any occurrence(s) the subject of such notice, the Insurer shall refund (without interest) 75% of the Reinstatement Premium to the Named Insured ("Refunded Premium"). The Insurer's liability under this Policy to make any payment after the Reinstatement Period of ultimate net loss in respect of any occurrence(s) the subject of such notice shall be reduced by the amount of the Refunded Premium.

(u) **Optional Extension of Reporting Period**

In the event of expiration of Coverage A, other than by reason of cancellation for non-payment of premium, the Named Insured may elect, prior to expiration of any of the coverages hereunder, to secure (or in the case of extension, continue) Coverage B for such annual periods (which total period shall be the Discovery Period) and for such Insureds as the Named Insured shall designate by giving the Insurer written notice of such election and paying to the Insurer the annual premium(s) as set forth in the attached Schedule D no later than the date(s) of commencement of the annual period(s) to which such coverage will apply. Where first notice of an occurrence is given during the Discovery Period, it shall be deemed to have been given in the immediately preceding annual period or portion thereof.

(v) **Expiration Date**

Except as otherwise provided in Section (w) of this Article V, Coverage A shall expire upon cancellation thereof or at the end of an annual period if not extended. Coverage B shall expire upon termination of the Discovery Period.

**(w) Former Subsidiaries, Affiliates and Associated Companies**

If any subsidiary, affiliate or associated company of the Named Insured which is an Insured hereunder by virtue of paragraph (1)(B) or subsection (3) of Section (a) of Article III hereof shall cease to be such a subsidiary, affiliate or associated company of the Named Insured, then at such time Coverage A shall automatically expire as to such former subsidiary, affiliate or associated company (although Coverage A shall continue with respect to the Named Insured and any other entity which remains an Insured as respects its own liability, if any, arising out of its prior ownership of or affiliation or association with the former subsidiary, affiliate or associated company), and Coverage B shall (unless the Named Insured otherwise specifies) automatically incept as to such former subsidiary, affiliate or associated company and continue in force until termination of the annual period (which portion of such annual period shall be the Discovery Period) in which such cessation takes place, without additional payment or refund of any premium. Prior to the end of such annual period, such former subsidiary, affiliate or associated company may, upon receipt by the Insurer of the written consent of the Named Insured, elect to extend Coverage B (and the Discovery Period) beyond the end of such annual period on such terms and conditions, for such period, subject to such limit and for such additional premium(s) as may be agreed with the Insurer.

**(x) Headings**

The descriptions in the headings and subheadings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

Form D-8-2

## SCHEDULE D

If the Named Insured shall elect to obtain Coverage B pursuant to Article V (Conditions), Section (u) of this policy, the annual premium charge for Coverage B shall be computed by multiplying the premium for the last annual period Coverage A was in force by the applicable factor set forth in the following table:

| Coverage B<br>Annual Premium Charge | |
|---|---|
| 1st Year | 12% |
| 2nd Year | 11% |
| 3rd Year | 10% |
| 4th and each Additional Year | 9% |

End.66-1/93
Form 004

ADDITIONAL/RETURN PREMIUM $ NIL

**REVISED POLICY FORM ENDORSEMENT**
**(Replacement Policy Form)**

In consideration of the premium charged, it is agreed and acknowledged that this Policy is changed as of the effective date set forth below ("Effective Date") by cancelling the Policy form (including endorsements) in effect as of the Effective Date ("Old Policy Form") and issuing the revised Policy form (including revised endorsement forms) to which this Endorsement is attached ("New Policy Form").

Coverage under this Policy for all occurrences notice of which shall have been given by the Named Insured to the Insurer prior to the Effective Date shall be governed by the Old Policy Form. Coverage under this Policy for all occurrences notice of which shall be given by the Named Insured to the Insurer on or after the Effective Date shall be governed by the New Policy Form.

Except as may be agreed to by the Insurer in writing or as provided below, the Inception Date of this Policy (for purposes of the definition of "occurrence") shall be 9th January, 19 86 unless the Old Policy provided coverage from a later date, in which event the Inception Date of this Policy shall be that later date as provided in the Old Policy. Notwithstanding the foregoing, if:

a. before the Effective Date, the manager or equivalent level employee of the risk management, insurance or law department or any executive officer of any Insured had knowledge or notice that (i) an event or exposure to conditions had commenced, or (ii) personal injury or property damage caused by use of the Insured's goods or products had taken place in whole or in part, whether or not such person was aware that such occurrence was likely to involve this Policy, and

b. the Old Policy Form would not have covered such occurrence if notice thereof would have been given to the Insurer immediately prior to the Effective Date,

the Inception Date with respect to such occurrence shall be the Effective Date and the New Policy Form shall not afford any coverage with respect thereto.

Notwithstanding anything herein or in the Old Policy Form or the New Policy Form to the contrary, no occurrence shall be covered under both the Old Policy Form and the New Policy Form.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1992

All other terms and conditions remain unchanged.

This endorsement is attached to and made a part of Policy No. KDB-5096/4 of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: BM ANGLO-AMERICAN LTD.

Date of Issue: 14th April, 1993

By [signature]
AUTHORISED REPRESENTATIVE JK

End No. 1

End.6(b)-1/92
Form 004

ADDITIONAL/RETURN PREMIUM $ NIL

**PRORATION OF RELATED LOSSES FOR RELATED INSUREDS**

In consideration of the premium charged, it is agreed and acknowledged that, notwithstanding any other provision of this policy to the contrary, in the event both an Insured under this policy and one or more insureds under the policies listed below ("Related Policies") incur damages due to (i) one occurrence (including matters treated as one occurrence pursuant to the last paragraph of Section (f) of Article III (Definitions) of this policy), or (ii) multiple occurrences arising out of substantially similar events or conditions which give rise to substantially similar types of loss, injury, damage or liability, the maximum amount payable by the Insurer and its affiliates to the Insured and to such other insureds, in the aggregate, under both this policy and the Related Policies, relating to such damages shall be the limit of liability amount stated in Item 2(a) of the Declarations of Policy No. KDE-5096/4 subject to the annual period limit of liability as stated in Item 2(b) of the Declarations of this policy in the aggregate for all covered occurrences of which notice is first given under this policy during such annual period. In any such event, the Insurer shall be liable under this policy, subject to the applicable limit of liability, only for that amount of such damages in excess of the greater of the amount described in either Subsection (a) (1) or (2) of Article II (Limit of Liability) of this policy.

| INSURED | INSURER | POLICY NO. |
|---|---|---|
| PEABODY HOLDING COMPANY INC. | ACE INSURANCE COMPANY LTD. | PBD-447 |

This Endorsement creates a sublimit which further limits the Insurer's liability and does not increase the Insurer's maximum liability under this policy.

The actual amount allocated to the Insured and to each other insured pursuant to this endorsement shall be determined in proportion to the amount which otherwise would be payable by the Insurer or its affiliate to the Insured and to each other insured in the absence of this endorsement.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1992
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 14th April, 1993

By [signature]
AUTHORISED REPRESENTATIVE JR

End No. 2

GLD055646
0049-GLD-000055646

End.38-9/92
Form 004

ADDITIONAL/RETURN PREMIUM $ NIL

**SUBSIDIARY RETROACTIVE COVERAGE ENDORSEMENT**

In consideration of the payment of the above-referenced premium, it is agreed and understood as follows:

1. The following named entity or entities shall be additional Insured(s) under this Policy ("Additional Insureds"):

   Entity

   PEABODY HOLDING COMPANY INC.

2. With respect to any Additional Insured and any subsidiary or affiliate thereof who becomes an Insured by reason of this Endorsement, the term "Inception Date", as used in Section (e) of Article III (Definitions), shall mean 5th March,1986; provided that with respect to any such subsidiary or affiliate acquired or formed by or merged with the Additional Insured or with a subsidiary or affiliate of the Additional Insured after such date, the "Inception Date" shall be the date of such acquisition, formation or merger.

3. Any payment by A.C.E. Insurance Company (Bermuda), Ltd. or A.C.E. Insurance Company, Ltd. under another excess liability policy issued to a predecessor or prior parent, affiliated or associated company of said Additional Insured ("Other Policy") of ultimate net loss in respect to an occurrence also covered pursuant to this Policy by reason of the extension of coverage granted by paragraph 2 of this Endorsement shall reduce by the amount of such payment the available limits of liability under this Policy in respect to such occurrence.

4. Section (a) of Article II (Limit of Liability) is amended by adding the following subsection (3) immediately following subsection (2) thereof:

   or (3) with respect to ultimate net loss for each occurrence covered pursuant to this Policy by reason of the extension of coverage granted by paragraph 2 of the "Subsidiary Retroactive Coverage Endorsement" to this Policy, the underlying limits of the underlying insurances listed on the present and/or prior Schedule B to the Other Policy, as to which the Insurer and the

cont'd...

The effective date of this endorsement is --

All other terms and conditions remain unchanged.

This endorsement is attached to and made a part of Policy No. --
of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: --

Date of Issue: --

By [signature]
AUTHORISED REPRESENTATIVE JR

End No. 3 cont/d

End.38-9/92
Form 004
Page 2

ADDITIONAL/RETURN PREMIUM $ —

Named Insured expressly agree that the insurance provided by this Policy shall (A) be in excess in respect of such occurrences covered by said underlying insurances, (it being understood that this Policy shall in no way be subject to, or affected by, the terms, conditions, or limitations of said underlying insurances), and (B) apply only as if such underlying insurances were fully available and collectable for all occurrences covered thereunder.

5. This Policy shall not apply to and the Insurer shall have no liability under this Policy in respect of any liability or alleged liability of the Additional Insured for damages on account of personal injury, property damage or advertising liability resulting from an occurrence (including a series of and/or several losses, injuries, damages or liabilities attributable directly or indirectly to the same event, condition, cause, defect or hazard or alleged defect or hazard or failure or alleged failure to warn of such) notice of which occurrence shall have been given by or on behalf of the Additional Insured to A.C.E. Insurance Company (Bermuda), Ltd. or A.C.E. Insurance Company, Ltd. prior to the effective date of this Endorsement.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1992
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 14th April, 1993

By Mark Ellison
AUTHORISED REPRESENTATIVE JR

End No. 3

End.12-8/88
Form 004

ADDITIONAL/RETURN PREMIUM: NIL

**ADDITIONAL INSURED ENDORSEMENT AND EXCLUSION FOR DESIGNATED EXPOSURES**

1. In consideration of payment of the additional premium referenced above, it is agreed and acknowledged that the following named entity or entities shall be additional Insured(s) under this Policy in accordance with Section (a) (3) of Article III (Definitions) of this Policy:

| ENTITY | EFFECTIVE DATE |
|---|---|
| BEAZER INC. | 31st January, 1992 |

2. Underwriters accept Beazer Inc. as an additional insured upon the express condition that this policy will afford no coverage to Beazer or HM Anglo-American or any subsidiary or affiliated company for any liabilities they may have (whether direct, indirect, contractual, or as a successor in interest to any firm) arising out of or in any way related to the following:

a) KMM single ply roofing product;
b) Coal Tar used with PPR roofs;
c) Any fire retardant plywood, including Dricon and Non Com;
d) RX and Extra Phenolic Foam Insulation.

Underwriters expressly intend by this exclusion to preclude any coverage arising and or in any way related to 2(a) - (d) above and shall have no responsibility to pay any expenses (including defense costs) incurred in the defense of those actions.

2. Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated.

The effective date of this endorsement is 1st October, 1992
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 14th April, 1993

By G. Lees Hebb
AUTHORISED REPRESENTATIVE JR

End No. 4

GLD055649
0049-GLD-000055649

End.64-11/91
Form 004

ADDITIONAL/RETURN PREMIUM $ NIL

**PER OCCURRENCE RETENTION SCHEDULE**
**(Item 2(c) of the Declarations)**

The per occurrence retention amount in Item 2(c) of the Declarations applicable to damages in respect of each peril listed below shall be as follows:

| Peril | Per occurrence retention amount |
|---|---|
| All Perils except those listed below | $ 100,000,000 |
| Aircraft/Aircraft Products | $ 800,000,000 |

If damages arise out of operations or the existance of a Joint Venture, as defined in this Policy, the per occurrence retention amount in Item 2(c) of the Declarations with respect to such damages shall equal the product of the per occurrence retention amount of the applicable peril listed above and the percentage interest of the Insured in the liability of the Joint Venture for such damages.

Nothwithstanding anything herein to the contrary, the per occurrence retention amount shall under no circumstances be less than US$100 million.

If damages in respect of any one occurrence are attributable to two or more of the above-referenced perils, the portion(s) of such damages attributable to any two or more of such perils may be combined at the option of the Named Insured and the excess of such combined amount over the amount of the largest per occurrence retention amount applicable to any of such combined perils shall be considered for purposes of Article II of this Policy as excess of the per occurrence retention amount set forth in Item 2(c) of the Declarations. The per occurrence retention amount listed above applicable to any peril not so combined shall apply to the portion of damages attributable to such peril.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1992
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 14th April, 1993

By [signature]
AUTHORISED REPRESENTATIVE JK

End No. 5

End.66-1/93
Form 003

ADDITIONAL/RETURN PREMIUM $ NIL

REVISED POLICY FORM ENDORSEMENT
(Prior Policy Form)

In consideration of the premium charged, it is agreed and acknowledged that this Policy is changed as of the effective date set forth below ("Effective Date") by cancelling the Policy form (including endorsements) to which this Endorsement is attached ("Old Policy Form") and issuing the revised Policy form 004-11/91 (including revised endorsement forms) ("New Policy Form").

Coverage under this Policy for all occurrences notice of which shall have been given by the Named Insured to the Company prior to the Effective Date shall be governed by the Old Policy Form. Coverage under this Policy for all occurrences notice of which shall be given by the Named Insured to the Company on or after the Effective Date shall be governed by the New Policy Form.

Except as may be agreed to by the Company in writing or as provided below, the Inception Date of this Policy (for purposes of the definition of "occurrence") shall be 9th January, 19 86. No action of the Company in issuing this endorsement and/or the New Policy Form (004-11/91) shall in any way alter or amend the inception date for coverage afforded under the Old Policy Form. Notwithstanding the foregoing, if:-

a. before the Effective Date, the manager or equivalent level employee of the risk management, insurance or law department or any executive officer of any Insured had knowledge or notice that (i) an event or exposure to conditions had commenced, or (ii) personal injury or property damage caused by use of the Insured's goods or products had taken place in whole or in part, whether or not such person was aware that such occurrence was likely to involve this Policy, and

b. the Old Policy Form would not have covered such occurrence if notice thereof would have been given to the Company immediately prior to the Effective Date,

the Inception Date with respect to such occurrence shall be the Effective Date and the New Policy Form shall not afford any coverage with respect thereto.

Notwithstanding anything herein or in the Old Policy Form or the New Policy Form to the contrary, no occurrence shall be covered under both the Old Policy Form and the New Policy Form.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1992
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. XDE-5096
of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 14th April, 1993

By [signature]
AUTHORISED REPRESENTATIVE JR

End No. 9

**INSURER NAME CHANGE ENDORSEMENT**

It is agreed and acknowledged that the name of the Insurer is changed to **A.C.E. INSURANCE COMPANY, LTD.**, a Bermuda company, the corporate successor to A.C.E. INSURANCE COMPANY (BERMUDA) LTD., a Bermuda company.

**The effective date of this endorsement is July 7th, 1993.**

**All other terms and conditions remain unaltered.**

**This endorsement is attached to and made a part of**

Policy No. KDE-5096/4 of A.C.E. INSURANCE COMPANY (BERMUDA) LTD.

Issued to: HM ANGLO-AMERICAN LTD.

**Date of Issue: July 8th, 1993.**

By: KPWhite

**Authorized Representative**

**End. No.: NC 7/93**

# A.C.E. INSURANCE COMPANY, LTD.
# A.C.E. INSURANCE COMPANY (BERMUDA), LTD.

30 Woodbourne Avenue
P.O. Box HM 1015, Hamilton HM DX, Bermuda

## SCHEDULE A

**PLEASE FOLLOW THE INSTRUCTIONS BELOW WHEN PREPARING SCHEDULE A. SIGN, DATE AND ATTACH THIS PAGE TO THE SCHEDULE WHEN COMPLETE. SUBSEQUENT TO BINDING, IT IS THE INSURED'S OBLIGATION TO UPDATE SCHEDULE A IN THE EVENT OF ANY CHANGES.**

**Instructions:**

Schedule A should contain:

Section 1. any subsidiary, affiliate or associated company whose financial statements are NOT consolidated in the financial statements of the Applicant and which are to be fully insured under the ACE policy.

**Do not list consolidated subsidiaries and affiliates or other entities included within the definition of "Insured" in the ACE Policy.**

Section 2. any joint ventures where the Applicant requests 100% coverage for the joint venture itself.

**It is not necessary to list those joint ventures for which the Applicant is obligated to provide insurance or with respect to which the Applicant requests coverage only for the Applicant's liability arising out of the joint venture. Any joint venture listed on this Schedule A will itself be a direct insured under the ACE Policy.**

**Each page of Schedule A should be dated and this date should coincide with the Schedule date shown at the bottom of this page.**

**APPLICANT/NAMED INSURED:** Hanson
**BY:** [signature]
**TITLE:** Director of Risk Management
**DATE SIGNED:** December 24, 1992
**SCHEDULE DATE:** October 1, 1992

End.7-7/88
Form 004

ADDITIONAL/~~RETURN~~ PREMIUM: $1,745,000

## ANNIVERSARY ENDORSEMENT

*It is agreed and acknowledged that in consideration of the payment by the Named Insured of the following premium, Coverage A of the Policy is extended for the period set forth below:*

Premium:

| | |
|---|---|
| Current Payment | $ 1,745,000 |
| Unearned Premium Credit | $ -0- |
| (____________ to | |
| ____________) | |
| Total Premium | $ 1,745,000 |
| Extension Period: from 12:01 A.M. | 1st October, 1993 |
| to 12:01 A.M. | 1st October, 1994 |

*Prevailing time at the address of the* Named Insured

It is further agreed and acknowledged that (i) if different, the per occurrence retention amount set forth in Item 2 (c) of the Declarations is amended in accordance with the Changed Per Occurrence Retention Schedule effective as of the effective date of this endorsement, and *(ii) the limit of liability* amount set forth in Item 2 (a) and 2 (b) of the Declarations shall be $200,000,000.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 12th October, 1993
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 30th November, 1994

By ____________
Authorised Representative

End No. 6

~~End.~~ 65-11/91
Form 004

**ADDITIONAL PREMIUM: $ NIL**

**CHANGED**
**PER OCCURRENCE RETENTION SCHEDULE**
**(Item 2(c) of the Declarations)**

With respect to occurrences first reported under this Policy after the effective date hereof, the per occurrence retention amount in Item 2(c) of the Declarations applicable to damages in respect of each peril listed below shall be as follows:

| Peril | Per Occurrence Retention Amount |
|---|---|
| All Perils except those listed below | $100,000,000 |
| Aircraft | $500,000,000 |

If damages arise out of operations or the existence of a Joint Venture, as defined in this policy, the per occurrence retention amount in Item 2(c) of the Declarations with respect to such damages shall equal the product of the per occurrence retention amount of the applicable peril listed above and the percentage interest of the Insured in the liability of the Joint Venture for such damages.

Notwithstanding anything herein to the contrary, the per occurrence retention amount shall under no circumstances be less than $100 million.

If damages in respect of any one occurrence are attributable to two or more of the above-referenced perils, the portion(s) of such damages attributable to any two or more of such perils may be combined at the option of the Named Insured and the excess of such combined amount over the amount of the largest per occurrence retention amount applicable to any of such combined perils shall be considered for purposes of Article II of this Policy as excess of the per occurrence retention amount set forth in Item 2(c) of the Declarations. The per occurrence retention amount listed above applicable to any peril not so combined shall apply to the portion of damages attributable to such peril.

cont'd....

The effective date of this endorsement is ___ -- ___
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. ___ -- ___
of A.C.E. INSURANCE COMPANY, LTD.
Issued to: ___ -- ___

Date of Issue: ___ -- ___

By ___ [signature] ___
Authorised Representative

End No. 7 cont'd

End.105-9/94
Form 004

ADDITIONAL/RETURN PREMIUM: NIL

## MERGED INSUREDS ENDORSEMENT

In consideration of the premium charged, it is agreed and acknowledged as follows:

1. Each entity listed below ("Entity"), and all persons and organizations who would be insureds pursuant to Section (a) of Article III (Definitions) if the below-listed entities were Named Insureds under this Policy ("Insured Subsidiaries"), shall be additional Insureds under this Policy (collectively "Additional Insureds").

| Entity | Inception Date |
|---|---|
| **Quantum Chemical Corporation** | **30th April, 1986** |

2. Except as otherwise provided herein, with respect to any occurrence giving rise to liability of any Entity or Insured Subsidiaries of such Entity, the Inception Date under this Policy shall be the date set forth above for such Entity, provided that the Inception Date for any Insured Subsidiary acquired or formed by or merged with the Entity or an affiliate of the Entity after such date shall be the date of such acquisition, formation or merger.

3. If the Additional Insureds were insureds under another excess liability policy issued by the Insurer or its affiliate to the Additional Insured or its affiliate ("Prior Policy") and if with respect to any occurrence giving rise to liability of any Additional Insured the event or conditions commence or the personal injury or property damage caused by use of the Additional Insured's products takes place after the Inception Date for such Additional Insured under this Policy and before the effective date of this Endorsement, then the liability of the Insurer under this Policy with respect to such occurrence *shall* (i) attach at the higher of the respective attachment amount under the Prior Policy as of the date of its cancellation, or this Policy as of the date of notice to the Insurer of such occurrence, and (ii) be subject to the smaller of the respective limit of liability under the Prior Policy as of the date of its cancellation or this Policy as of the date of notice to the Insurer of such occurrence. If one or more Additional Insureds and one or more other Insureds incur liability with respect to the same occurrence or type of product, the Insurer's maximum aggregate liability under this Policy with respect to such occurrence or product (subject to the further limitations in this paragraph) shall not exceed the respective limit of liability under this

cont'd/....

The effective date of this endorsement is ______ --
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. ______ --
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: ______ --

Date of Issue: ______ --

By ______
Authorised Representative

**End No.** 8 cont'd

**ADDITIONAL/RETURN PREMIUM:**

Policy as of the date of such occurrence, except to the extent such other Insured's liability is attributable to its control, ownership or acquisition of or merger or affiliation with the Additional Insured, in which case the Insurer's maximum liability under this Policy with respect to such occurrence or product (subject to the further limitation of this paragraph) shall not exceed the respective limit of liability under the Prior Policy as of the date of its cancellation. This paragraph and each of the provisions therof further limits and does not increase the Insurer's liability under this Policy with respect to any occurrence described herein.

4. Any payment by the Insurer or its affiliate under the Prior Policy of ultimate net loss in respect to an occurrence also covered pursuant to this Policy by reason of the extension of coverage granted by this endorsement shall reduce by the amount of such payment the available limits of liability under this Policy in respect to such occurrence.

5. Subsection (a) (1) of Article II (Limit of Liability) is amended to read in its entirety as follows:
   (1) the amount of the stated per occurrence limits without regard to their reduction, exhaustion or impairment in whole or in part (hereinafter called the "underlying limits") of the underlying insurances and self-insured retentions listed or which should have been listed on the present and/or any prior Schedule B to this Policy or if applicable to the Prior Policy, as to which the Insurer and the Named Insured expressly agree that the insurance provided by this Policy shall (A) be in excess in respect of such occurrences covered by said underlying insurances (it being understood that this Policy shall in no way be subject to, or affected by, the terms, conditions, or limitations of said underlying insurances), and (B) apply only as if such underlying insurances were fully available and collectible for all occurrences covered thereunder.

6. This Policy shall not apply to and the Insurer shall have no liability under this Policy with respect to any liability or alleged liability of any Additional Insured for damages on account of personal injury, property damage or advertising liability resulting from an occurrence (including a series of and/or several losses, injuries, damages or liabilities attributable directly or indirectly to such occurrence) notice of which occurrence shall have been given under the Prior Policy prior to the effective date of this Endorsement.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is **1st October, 1993**
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. **KDE-5096/4**
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: **HM ANGLO-AMERICAN LTD.**

Date of Issue: **30th November, 1994**

By ______________
Authorised Representative

**End No. 8**

End.7-7/88
Form 004

ADDITIONAL/~~RETURN~~ PREMIUM: $1,745,000

## ANNIVERSARY ENDORSEMENT

It is agreed and acknowledged that in consideration of the payment by the Named Insured of the following premium, Coverage A of the Policy is extended for the period set forth below:

Premium:

| | |
|---|---|
| Current Payment | $ 1,745,000 |
| Unearned Premium Credit | $ - 0 - |
| (__________ to | |
| __________) | |
| Total Premium | $ 1,745,000 |
| Extension Period: from 12:01 A.M. | 1st October, 1993 |
| to 12:01 A.M. | 1st October, 1994 |
| Prevailing time at the address of the Named Insured | |

It is further agreed and acknowledged that (i) if different, the per occurrence retention amount set forth in Item 2 (c) of the Declarations is amended in accordance with the Changed Per Occurrence Retention Schedule effective as of the effective date of this endorsement, and (ii) the limit of liability amount set forth in Item 2 (a) and 2 (b) of the Declarations shall be $200,000,000.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1993
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 9th January, 1995

By [signature]
Authorised Representative

End No. 6 (Revised)

End.7-7/88
Form 004

ADDITIONAL/~~RETURN~~ PREMIUM: $1,140,000

## ANNIVERSARY ENDORSEMENT

It is agreed and acknowledged that in consideration of the payment by the Named Insured of the following premium, Coverage A of the Policy is extended for the period set forth below:

Premium:

| | |
|---|---|
| Current Payment | $ 1,140,000 |
| Unearned Premium Credit | $ - 0 - |
| (____________ to | |
| ____________) | |
| Total Premium | $ 1,140,000 |
| Extension Period: from 12:01 A.M. | 1st October, 1994 |
| to 12:01 A.M. | 1st October, 1995 |

Prevailing time at the address of the Named Insured

It is further agreed and acknowledged that (i) if different, the per occurrence retention amount set forth in Item 2 (c) of the Declarations is amended in accordance with the Changed Per Occurrence *Retention Schedule effective as of the effective date of this endorsement*, and (ii) the limit of liability amount set forth in Item 2 (a) and 2 (b) of the Declarations shall be $150,000,000.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1994
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 8th December, 1994

By [signature]
Authorised Representative

End No. ~~8~~ 9

End. 65-11/91
Form 004

**ADDITIONAL PREMIUM: $ NIL**

**CHANGED**
**PER OCCURRENCE RETENTION SCHEDULE**
**(Item 2(c) of the Declarations)**

With respect to occurrences first reported under this Policy after the effective date hereof, the per occurrence retention amount in Item 2(c) of the Declarations applicable to damages in respect of each peril listed below shall be as follows:

| Peril | Per Occurrence Retention Amount |
|---|---|
| All Perils except those listed below | $150,000,000 |
| Aircraft | $500,000,000 |

If damages arise out of operations or the existence of a Joint Venture, as defined in this policy, the per occurrence retention amount in Item 2(c) of the Declarations with respect to such damages shall equal the product of the per occurrence retention amount of the applicable peril listed above and the percentage interest of the Insured in the liability of the Joint Venture for such damages.

Notwithstanding anything herein to the contrary, the per occurrence retention amount shall under no circumstances be less than $100 million.

If damages in respect of any one occurrence are attributable to two or more of the above-referenced perils, the portion(s) of such damages attributable to any two or more of such perils may be combined at the option of the Named Insured and the excess of such combined amount over the amount of the largest per occurrence retention amount applicable to any of such combined perils shall be considered for purposes of Article II of this Policy as excess of the per occurrence retention amount set forth in Item 2(c) of the Declarations. The per occurrence retention amount listed above applicable to any peril not so combined shall apply to the portion of damages attributable to such peril.

cont'd....

The effective date of this endorsement is ______ -- ______
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. ______ -- ______
of A.C.E. INSURANCE COMPANY, LTD.
Issued to: ______ -- ______

Date of Issue: ______ -- ______

By ______
Authorised Representative

**End No. 10 cont'd**

End. 65-11/91
Form 004
Page 2

**ADDITIONAL/ RETURN PREMIUM: $**

If on or before the effective date of this Schedule or 1st October, 1994 whichever is later, the manager or equivalent level employee of the risk management, insurance or law department or any executive officer of any Insured had knowledge or notice of an occurrence likely to involve this Policy, the per occurrence retention amount in effect when such person(s) first became aware such occurrence was likely to involve this Policy shall apply to such occurrence to the extent the per occurrence retention amount set forth above applicable to such occurrence is less than such prior per occurrence retention amount.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1994
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 6th December, 1994

By [signature]
Authorised Representative

End No. ~~9~~ 10

GLD055661
0049-GLD-000055661

End.112-12/94
Form 004

ADDITIONAL/RETURN PREMIUM:

**ENDORSEMENT RE-ISSUANCE/RENUMBERING**

It is agreed and understood that effective 1st October, 1994 current Endorsements No. 8 being the Anniversary Endorsement and No. 9 being the Changed Per Occurrence Retention Schedule are hereby renumbered as Endorsements Nos. 9 & 10 respectively.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1994
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE-5096/4
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: HM ANGLO-AMERICAN LTD.

Date of Issue: 9th January, 1995

By ____________________
Authorised Representative

End No. 11

GLD055662
0049-GLD-000055662

End.31-3/89
Form 004

ADD( )NAL/RETURN PREMIUM: $30,460

**DIVESTITURE PREMIUM REFUND ENDORSEMENT**
**(With Discovery)**

In consideration of the refund of the above-referenced premium, it is agreed and understood that Coverage A expires and Coverage B incepts as of the effective date of this Endorsement in respect of the Insured(s) listed below and that such Coverage B shall continue in force until termination of the current annual period, unless extended as provided in the Policy:

**DATE OF DIVESTITURE**

**1st June, 1995**

| | | |
|---|---|---|
| O. Ames Company | Rexair, Inc | Farberware Inc. |
| Spartus Home Furnishings | The Ertl Company, Inc. | Valley Recreational Products, Inc. |
| Bear Archery, Inc. | Universal Gym Equipment, Inc. | Tommy Armour Golf Company |
| Georgia Boot, Inc. | Lehigh Safety Shoe Company | Trimfoot Company |
| Empire Footwear | Native Textiles | Tubular Textiles Machinery Corp. |
| Blue Mountain Industries | Franklin Dyed Yarns | Baylis Brothers, Inc. |
| Teters Floral Products, Inc. | Piedmont Moulding Corp. | Jacuzzi, Inc. |
| Columbia Lighting, Inc. | Prescolite | Kim Lighting, Inc. |
| MW Manufacturers, Inc. | Brown Moulding Company, Inc. | Garden State Tanning, Inc. |
| Leon Plastics, Inc. | Huron, Inc. | SCM Metal Products, Inc. |
| United Chair Company, Inc. | Anderson Hickey Company | Bearing Inspection, Inc. |
| Jade Technologies Corporation | Halkey-Roberts Corporation | Quantum Performance Films |
| USI Properties | Progress Lighting | Spaulding Lighting, Inc. |

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

*The effective date of this endorsement is* **1st June, 1995**
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. **KDE - 5096/4**
of A.C.E. INSURANCE COMPANY, LTD.

*Issued to:* **HM ANGLO - AMERICAN LTD.**

Date of Issue: **7th February, 1996**

By [signature]
Authorised Representative CF

**End No. 12**

GLD055663
0049-GLD-000055663

End.7-7/88
Form 004

A[illegible] TIONAL/~~RETURN~~ PREMIUM: $1,050,0[illegible]

## ANNIVERSARY ENDORSEMENT

It is agreed and acknowledged that in consideration of the payment by the Named Insured of the following premium, Coverage A of the Policy is extended for the period set forth below:

| | |
|---|---|
| Premium: | |
| Current Payment | $ 1,050,000 |
| Unearned Premium Credit | $ -0- |
| (__________ to | |
| __________) | |
| Total Premium | $ 1,050,000 |
| Extension Period: from 12:01 A.M. | 1st October, 1995 |
| to 12:01 A.M. | 1st October, 1996 |
| Prevailing time at the address of the Named Insured | |

It is further agreed and acknowledged that (i) if different, the per occurrence retention amount set forth in Item 2 (c) of the Declarations is amended in accordance with the Changed Per Occurrence Retention Schedule effective as of the effective date of this endorsement, and (ii) the limit of liability amount set forth in Item 2 (a) and 2 (b) of the Declarations shall be $150,000,000.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1995
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE - 5096/4
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: HM ANGLO - AMERICAN LTD.

Date of Issue: 7th February, 1996

By [signature]
Authorised Representative CF

End No. 13

End.106-12/94
Form 004

( )ITIONAL/RETURN PREMIUM: $ NIL (

## ANNUAL AGGREGATE INTEGRATED OCCURRENCE SUBLIMIT ENDORSEMENT

Notwithstanding any other provision of this Policy, including, without limitation, Sections II(a), III(e) and III(f) and Items 2(a) and 2(b) of the Declarations, it is hereby agreed that there shall be an annual aggregate sublimit equal to one hundred million dollars ($100,000,000) with respect to all Integrated Occurrences (as defined below), collectively, of which notice is first given to the Insurer on or after the effective date of this endorsement in any annual period. The maximum annual aggregate sublimit with respect to any single Integrated Occurrence or any combination of such Integrated Occurrences shall be one hundred million dollars ($100,000,000). Such sublimit shall be included within and shall not increase the annual period limit in the aggregate for all covered occurrences and claims (including, without limitation, Integrated Occurrences) set forth in Item 2(b) of the Declarations. Such sublimit shall not be subject to elective reinstatement pursuant to Section V(t)(2) of the Policy, unless otherwise agreed in writing by the Insurer, and the penultimate paragraph of such Section V(t)(2) is hereby deleted.

The term "Integrated Occurrence" means:

a. actual or alleged personal injury, property damage and/or advertising liability to two or more persons or properties taking place more than thirty (30) days apart arising from product(s) or services, or

b. actual or alleged personal injury, property damage and/or advertising liability to two or more persons or properties arising from a continuous, intermittent or repeated exposure to conditions over a period longer than thirty (30) consecutive days,

which is attributable directly, indirectly or allegedly to the same actual or alleged event, condition, cause, defect or hazard or failure to warn of such.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st October, 1995
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE - 5096/4
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: HM ANGLO - AMERICAN LTD.

Date of Issue: 7th February, 1996

By [signature]
Authorised Representative CF

End No. 14

End.31-3/89
Form 004

ADDITIONAL/RETURN PREMIUM: $29,315

**DIVESTITURE PREMIUM REFUND ENDORSEMENT**
**(With Discovery)**

In consideration of the refund of the above-referenced premium, it is agreed and understood that Coverage A expires and Coverage B incepts as of the effective date of this Endorsement in respect of the Insured(s) listed below and that such Coverage B shall continue in force until termination of the current annual period, unless extended as provided in the Policy:

| | DATE OF DIVESTITURE |
|---|---|
| Suburban Propane Company | 1st March, 1996 |

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st March, 1996
All other terms and conditions remain unchanged.
This endorsement is attached to and made a part of Policy No. KDE - 5096/4
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: HM ANGLO - AMERICAN LTD.

Date of Issue: 22nd July, 1996

By C. [signature]
Authorised Representative CF

End No. 15

# A.C.E. INSURANCE COMPANY, LTD.
# A.C.E. INSURANCE COMPANY (BERMUDA), LTD.

30 Woodbourne Avenue
P.O. Box HM 1015, Hamilton HM DX, Bermuda

## SCHEDULE A

**PLEASE FOLLOW THE INSTRUCTIONS BELOW WHEN PREPARING SCHEDULE A. SIGN, DATE AND ATTACH THIS PAGE TO THE SCHEDULE WHEN COMPLETE. SUBSEQUENT TO BINDING, IT IS THE INSURED'S OBLIGATION TO UPDATE SCHEDULE A IN THE EVENT OF ANY CHANGES.**

**Instructions:**

Schedule A should contain:

Section 1. any subsidiary, affiliate or associated company whose financial statements are **NOT** *consolidated in the financial statements* of the Applicant and which are to be fully insured under the ACE policy.

**Do not list consolidated subsidiaries and affiliates or other entities included within the definition of "Insured" in the ACE Policy.**

Section 2. any joint ventures where the Applicant requests 100% coverage for the joint venture itself.

**It is not necessary to list those joint ventures for which the Applicant is obligated to provide insurance or with respect to which the Applicant requests coverage only for the Applicant's liability arising out of the joint venture. Any joint venture listed on this Schedule A will itself be a direct insured under the ACE Policy.**

**Each page of Schedule A should be dated and this date should coincide with the Schedule date shown at the bottom of this page.**

**APPLICANT/NAMED INSURED:** Hanson
**BY:** [signature]
**TITLE:** Director of Risk Management
**DATE SIGNED:** December 24, 1992
**SCHEDULE DATE:** October 1, 1992

GLD055667
0049-GLD-000055667

<u>**SCHEDULE A**</u>

1. H.M. Anglo - American, Ltd.
2. Carisbrook Industries Inc.
3. Endicott Johnson Corporation
4. Kidde Industries Inc.
5. Hanson Natural Resources Company
6. Gold Fields American Corporation

| | |
|---|---|
| Applicant/Named Insured: | Hanson |
| By: | |
| Title: | Director of Risk Management |
| Date Signed: | December 24, 1992 |
| Schedule Date: | October 1, 1992 |

MHB1217.doc/ddk/293C