



UNDERWATER INSTRUCTORS PROFESSIONAL LIABILITY INSURANCE

NOTICE: THIS IS A CLAIMS MADE INSURANCE FORM. AS SET FORTH BELOW, COVERAGE UNDER THIS INSURANCE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE PERIOD OF INSURANCE. NOTICE OF CLAIMS MUST BE GIVEN IMMEDIATELY. UPON TERMINATION OF THIS INSURANCE, THERE IS A MAXIMUM NINETY (90) DAY REPORTING PERIOD. PLEASE REVIEW THIS INSURANCE WORDING CAREFULLY.

In consideration of the payment of the premium and in reliance upon the statements in the Insured's application and subject to the insuring agreements, declarations, coverages, definitions, conditions, limitations, warranties, exclusions, endorsements and any other written material contained in the Policy of which this wording forms a part of, the Underwriters agree with the Insured as follows:

A. INSURING AGREEMENTS

1. COVERAGE - CLAIMS MADE

- a. Subject to the Limit of Liability for Damages, the Underwriters agree to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages for Bodily Injury and/or Property Damage for Claims arising from an Event caused by any negligent act, error or omission in the rendering of or failure to render Professional Services by an Insured.
- b. This insurance only applies to Claims first made against the Insured during the period of this insurance as shown on the Policy Declarations Page arising from Events occurring subsequent to the retroactive date as shown on the Policy Declarations Page. Claims arising from the same Event made against the Insured over more than one period of insurance shall be deemed to have been made against the Insured during the period of insurance in which the first Claim is made. If during the period of insurance the Insured first becomes aware of and gives written notice to Underwriters of an Event occurring subsequent to the retroactive date likely to give rise to a Claim hereunder, then any subsequent Claim made against the Insured arising from such Event shall be deemed to have been first made during the period of insurance in which the Event was first reported.
- c. If this insurance is not renewed or is canceled then, after termination of the last effective period of insurance, coverage will be provided for Claims arising from Events reported no more than ninety (90) days thereafter, provided that the Event occurred subsequent to the retroactive date and prior to termination of this insurance. After the ninety (90) day period, all coverage shall cease for any Claim arising from any Event which has not been previously reported as specified in this insurance. The ninety (90) day period shall not apply if this insurance is canceled due to non-payment of premium.

2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

- a. The Underwriters further agree to defend any Claim against the Insured (providing said suit is brought within the Territory) alleging Damages for Bodily Injury and/or Property Damage which are covered and payable under the terms of this insurance, even if any of the allegations of the Claim are groundless, false or fraudulent. The Underwriters shall have the right to make such investigation and settlement of any Claim as deemed expedient and in their sole discretion.

The Underwriters shall not be obligated to pay any Claim after the applicable limit of Liability for Damages has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder.

The Underwriters shall not be obligated to defend any Claim after the applicable Limit of Liability for Defense Expenses has been exhausted.

- b. TERRITORY

Territory means worldwide.

- c. DEFENSE EXPENSES

Defense Expenses means:

- (1) All expenses incurred by the Underwriters in defending a Claim, all costs taxed against the Insured in any such suit and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment (post-judgment interest) and before the Underwriters have paid or tendered or deposited to court that part of the judgment which does not exceed the limit of Liability for Damages thereon.

- (2) Premiums on appeal bonds required in any such defended suit provided the counsel retained by the Underwriters has a reasonable belief in the success of an appeal and the Insured can qualify for an appeal for such amounts as shall exceed the Limit of Liability for Damages. The Underwriters shall have no obligation to apply for or furnish an appeal bond.
- (3) All reasonable expenses, other than loss of earnings, incurred by the Insured at the Underwriters' request, and/or reasonable investigatory fees and/or expenses directly incurred by the Insured with Underwriters' prior agreement.

3. LIMIT OF LIABILITY

- a. The Limit of Liability for Damages as specified on the Policy Declarations Page is the total limit applicable for any one Event regardless of the number of Claims made as a result of said Event or the number of Insureds against whom Claims have been made. The aggregate limit specified on the Policy Declarations Page is the maximum Underwriters will pay for Damages on Claims made during the annual period of the insurance regardless of the number of Events resulting in Claims made during the period of insurance.
- b. The Limit of Liability for Defense Expenses as specified on the Policy Declarations Page is the total limit applicable for any one Event regardless of the number of Claims made as a result of said Event or the number of Insureds against whom Claims have been made. The aggregate limit specified on the Policy Declarations Page is the maximum Underwriters will pay for Defense Expenses on Claims made during the annual period of the insurance regardless of the number of Events resulting in Claims made during the period of insurance.

B. ADDITIONAL DEFINITIONS

1. BODILY INJURY

Bodily Injury means Bodily Injury, mental anguish, mental injury, emotional distress only following physical injury sustained by a person.

2. CLAIM

Claim means a written demand for Damages received by an Insured, including service of suit.

3. DAMAGES

Damages means a compensatory monetary judgment or award (including pre-judgment interest) or settlement entered into with the Underwriters' prior written consent, and does not include:

- a. Defense Expenses;
- b. Punitive or exemplary damages, fines, judicial sanctions, penalties, or any damages which are a multiple of compensatory damages;
- c. The return or restitution of fees, compensation, profits, charges and/or expenses paid to the Insured for services rendered;
- d. Judgments or awards deemed uninsurable by law.

4. EVENT

Event means an accident which occurs while the claimant or claimant's decedent is in the water, entering the water, exiting the water or preparing to enter the water in connection with Diving instruction or supervision, including Scuba (self-contained underwater breathing apparatus) and snorkeling.

5. INSURED

Each of the following is an Insured under this insurance to the extent set forth below:

- a. The Named Insured shall be the individual identified on the Declarations Page of the Policy.
- b. Any Additional Insured named by endorsement to a Policy.
- c. The heirs, administrators and legal representatives of any Insured if the Insured is dead, incapacitated or bankrupt, but only as respects Professional Services rendered prior to such Insured's death, incapacity or bankruptcy.

The following are not insured under this insurance:

- (1) The employer of an Insured.
- (2) The employee of an Insured.
- (3) Any corporation, partnership or joint venture of which an Insured is a director, officer, partner, joint venturer, stockholder or employee.

6. PROFESSIONAL SERVICES

Professional Services means diving instruction and supervision only as approved and sanctioned by the diver training associations listed on the Declaration Pages.

7. PROPERTY DAMAGE

Property Damage means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it.

C. EXCLUSIONS

Coverage is not afforded under this insurance:

1. For any Claim by an Insured against another Insured.
2. For any Claim made by an employer against any Insured who is employed by or representing such employer.
3. For any obligation for which the Insured or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law including but not limited to the Jones Act, the U.S. Longshoremen and Harbor Workers Act, the Americans with Disabilities Act, and any civil rights laws or legislation.
4. For Bodily Injury to any employee of the Insured arising out of and in the course of his/her employment by the Insured, including any obligation to indemnify another in whole or in part, for such Bodily Injury.
5. For liability assumed by the Insured under any contract or agreement.
6. For Bodily Injury and/or Property Damage arising out of the ownership, maintenance, operation, use, loading or unloading of any automobile, aircraft or watercraft.
7. For Property Damage to:
 - a. Property owned or occupied by or rented to the Insured;
 - b. Property used by the Insured; or
 - c. Property in the care, custody or control of the Insured or property over which the Insured is for any purpose exercising physical control. (This exclusion does not apply to swimming pools rented by, used by, or occupied by the Named Insured.)
8. For any payments in the nature of fines, judicial sanctions, penalties, punitive and/or exemplary damages or multiples of compensatory damages.
9. For any Claim or Event reported to another insurance company prior to the inception of this insurance.
10. For any Claim arising out of any intentional, willful or deliberate act committed by or at the instigation of the Insured.
11. For any Claim arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such Claim.
12. For any Claim which is directly or indirectly attributable to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the Insured.
13. For any Claim arising out of discrimination by the Insured, including, but not limited to, age, color, race, sex, creed, national origin, marital status, mental or physical disability.
14. For any Claim arising out of infringements of trademark, trade name, patent or copyright.
15. For any Claim based on the insolvency or bankruptcy of any person, firm or organization.
16. For any Claim arising out of the performance of a criminal act or caused by an Insured while under the influence of alcohol, intoxicants, narcotics or any mind-altering substances.
17. For any Claim arising out of or resulting from sexual abuse or harassment or licentious, immoral or sexual behavior, whether or not such act is intended to lead to, or culminate in any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the Insured, his/her employees, patrons or from any causes whatsoever.
18. For any Claim in any way involving potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), hepatitis, or any other infectious disease or any complex or syndrome related thereto, or to any Claim in any way relating to the use or misuse or confidentiality of any information relating to HIV disease, hepatitis, or any other infectious disease, including the failure to disclose the health status of any Insured.
19.
 - a. For any Claim relating to the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, however caused or whenever or wherever happening.

b. For any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not any of the foregoing are or should be performed by the Insured or by others.

Pollutants means any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.

20. For any Claim arising out of any diving activity planned or conducted to a depth in excess of 130 feet or 40 meters.
21. For any Claim arising out of any diving activity conducted using breathing gas mixtures other than compressed air and / or enriched air (EANx / Nitrox).
22. For any Claim arising out of any diving activity conducted using other than open circuit self-contained underwater breathing apparatus (SCUBA) or semi-closed underwater breathing apparatus (semi- closed rebreathers).
23. For any Claim arising from acts other than those specifically approved and sanctioned by the diver certification organization(s) listed on the declaration page for the Insured in his/her capacity as a skin diving leader, divemaster, instructor, divecon, assistant instructor or sustaining instructor.
24. For any Claim arising from acts other than those specifically approved and sanctioned for the Insured in his/her membership category as defined by the diver certification organization(s) listed on the declaration page.
25. For any Claim arising out of the failure of any product, including Scuba and snorkeling equipment, whether owned or non-owned by an Insured.
26. For any Claim arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, demolition, destruction, repair, maintenance, inspection of vessels or other in water structures, or the collection of organisms for consumption or commercial use.
27. For any Claim arising out of any Event in which the insured left or allowed the uncertified student involved in the claim to be unattended during in-water instruction, tests, or exercises.
28. For any Claim arising out of any Event in which the insured failed to provide the student involved in the claim with direct supervision to the degree required for the specific level of training being provided as defined by the diver certification organization(s) listed on the declaration page.
29. For any Claim arising out of any Event in which the insured failed to obtain a fully completed and signed medical history form from the student involved in the claim prior to any in-water instruction, tests, or exercises; and in the case of a minor the failure to have obtained the minor's parent's or guardian's signatures on the medical history form.
30. For any Claim arising out of any Event in which the medical history form obtained from the student involved in the claim contained contraindications to participation in diving activities and the insured failed to require the student to obtain medical approval, based on a medical examination, from a licensed physician (who is not the student) prior to any in-water instruction, tests, or exercises.
31. For any Claim arising out of any Event involving instruction in which the insured failed to obtain from the student involved in the claim a fully completed and signed release of liability / assumption of risk agreement naming the insured as a released party and developed by or approved by the certification organization through which the training was offered; and in the case of a minor the failure to have obtained the minor's parent's or guardian's signatures on the release of liability / assumption of risk agreement.
32. For any Claim arising out of any Event involving any diving activities in which the insured failed to obtain from the participant involved in the claim a fully completed and signed release of liability / assumption of risk agreement naming the insured as a released party.
33. For any Claim arising out of any Event involving any diving activities in which the insured was not an active member in good standing with their certification organization at the time of the Event.
34. For any Claim arising out of any Event involving instruction in which the insured has failed to maintain records for the purpose of recording the progress of the student involved in the claim.
35. For any Claim arising out of any Event involving instruction in which the insured failed to maintain records for the purpose of evaluating the understanding of the instructional material by the student involved in the claim.
36. For any Claim arising out of any Event in which the insured has failed to maintain all records relating to the student involved in the claim for a minimum of five (5) years.
37. For any Claim arising out of any Event involving any training or supervisory dive conducted by the insured that is planned for depths greater than 100 meters / 330 feet or planned using gas mixes other than compressed air, oxygen, enriched air or tri-mix.
38. For any Claim arising out of any Event involving any training or supervisory dive conducted by the insured that was not in compliance with the standards, procedures and policies of the certification organization that sanctioned the training or diving activity involved.
39. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) that was not in compliance with the standards, procedures and policies of the certification organization that sanctioned the training or diving activity involved.

40. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) where the participant to Instructor ratio exceeds two to one. This ratio may be increased to four participants per Instructor when the Instructor is assisted by a certified Assistant Instructor or certified Dive Master.
41. For any Claim arising out of any Event involving the insured's conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational scuba diving via a supervised, controlled open water experience) involving participants under the age of 15 where the participant to instructor ratio exceeds one to one.

D. CONDITIONS

1. INSURED'S DUTIES ARISING OUT OF A CLAIM OR EVENT.

- a. As a condition precedent to the protection afforded by this insurance, the Insured shall immediately give to the Underwriters through the designated persons or entity shown on the Policy Declarations Page written notice of every Claim first made against the Insured during the period of this insurance, including, but not limited to, every written demand, notice, summons or other process received by the Insured or his/her representative.
- b. The Insured must also notify Underwriters through the designated persons or entity shown on the Policy Declarations Page as soon as practicable of an Event likely to give rise to a Claim hereunder or of the receipt from any person of an intention to hold the Insured responsible for any Event.

In any such case, the Insured shall, upon request, give the Underwriters such information as the Underwriters in their sole discretion may reasonably require.

2. ASSISTANCE AND COOPERATION

The Insured shall cooperate with the Underwriters and, upon the Underwriters' request, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution or indemnity against any person or organization who may be liable to the Insured because of Bodily Injury or Property Damage with respect to which insurance is afforded hereunder and the Insured shall attend hearings and trials and assist in securing and giving evidence, and obtaining the attendance of witnesses.

3. VOLUNTARY PAYMENTS

The Insured shall not voluntarily make any payment, make any admission of responsibility, assume any obligation or incur any expense other than for first aid to others at the time of the Event.

4. SUBROGATION CLAUSE

Upon payment under this insurance, the Underwriters shall be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice such rights.

5. OTHER INSURANCE

If other valid and collectible insurance is available to the Insured covering a Claim also covered by this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance. Notwithstanding any "other insurance" provision contained in any other valid and collectible insurance available to the Insured, the "other insurance" provision contained herein is controlling, and the Underwriter shall not make any payments under this insurance until the limits of the Insured's other insurance have been exhausted. Subject to the preceding, the insurance afforded hereunder is in excess of and shall not contribute with any other valid and collectible insurance which has been specifically contracted for the Insured or another under any policy in which the Insured is a Named or Additional Insured. Nothing herein shall be construed to make this insurance subject to the terms, definitions, conditions and limitations of the other insurances.

6. LEGAL ACTION AGAINST THE UNDERWRITERS

No person or organization has a right under this insurance:

- a. To join the Underwriters as a party or otherwise bring the Underwriters into a suit asking for Damages from any Insured; or
- b. To sue the Underwriters on this insurance unless all of its terms have been fully complied with.

7. FALSE OR FRAUDULENT CLAIMS

If the Insured shall give notice of any Claim or reports an Event likely to give rise to a Claim knowing the same to be false or fraudulent, this insurance shall become void and all rights hereunder shall be forfeited by the Insured.

8. INSPECTION AND AUDIT

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

The Underwriters may examine and audit the Named Insured's books and records at any time during the Policy period and extensions thereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.

9. CHANGES

Notice of any Agent or knowledge possessed by any Agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriters from asserting any right under the terms of this insurance, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance signed by an authorized representative of the Underwriters.

10. ASSIGNMENT

No assignment of interest under this insurance shall be valid unless the written consent of the underwriters is endorsed hereon.

11. APPLICATION

By acceptance of this insurance, the Named Insured agrees that the statements in the application are his/her representations, that such representations are accurate and complete, that such representations are material to the risk undertaken by the Underwriters in this insurance, and that this insurance is issued and continued in force in reliance upon the truth of such representations.

12. NOTICE OF CANCELLATION

It is understood and agreed that any Policy may be canceled by the Underwriters by mailing to the holder of such Policy at the address shown in that Policy written notice stating when [not less than thirty (30) days thereafter] such cancellation shall be effective, except in the case of cancellation for non-payment of premium, for which written notice stating when [not less than ten (10) days thereafter] such cancellation shall be effective. The mailing of notice of aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of this insurance period. Delivery of such written notice either by the Named Insured or by the Underwriters shall be equivalent to mailing. It is also understood and agreed that the premium applicable to individual Evidences of Insurance issued hereunder are considered fully earned at the inception of such Evidences.