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PRESS RELEASE
FOR IMMEDIATE RELEASE

COVERAGE DEVELOPMENTS: SHAVING OF LIMITS – EXHAUSTION OF
UNDERLYING INSURANCE

A Necessary Amendment to Excess Policies

Based on panel discussions with a multitude of insurance carriers, it is now mandatory on all accounts that have layered limits (excess layers of liability coverage) to include a “Shaved Limits Endorsement” in order to ensure consistency in coverage. In claims negotiations, it is sometimes necessary for an insured to come to an understanding with the primary carrier to obtain a settlement. For example, the insurer agrees to pay \$8 million of a \$10 million limit of liability, while the Insured pays the remaining \$2 million portion in order to result in a closed claim. Included in the negotiation process is a release from further liability—i.e. the insurer’s limit is considered exhausted in full.

Without a “Shaved Limits Endorsement,” the excess carriers may claim that the primary limits have not been exhausted, citing standard excess policy wording. Consequently, an argument can be provided that the excess carrier has no obligation, creating a gap in coverage that the insured would have to take on again. The intent of the endorsement is to have the excess carrier recognize payment by the insured as satisfying payment of underlying limits under policy terms. An example of acceptable wording should relay the following position (bold added for emphasis):

“It is expressly agreed that liability for any covered Loss shall attach to the Underwriters only after the Primary and Underlying Excess Insurers **or the Insured** shall have paid the full amount of their respective liability for such covered Loss. **If the Insured shall pay**, in the applicable legal currency, any such covered Loss, then the Underwriters shall recognize such payment for the depletion of the respective limits of liability of the Underlying Insurance. **In no way shall such payment by the Insured constitute a waiver of any terms, conditions or exclusions of the Underlying Insurance or this policy.** The Underwriters shall then be liable to pay only such additional amounts up to the Limit of Liability set forth in Item C of the Declarations, which shall be the maximum liability of the Underwriters in each Policy Period.”

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