

PROFESSIONAL LIABILITY ERRORS & OMISSIONS INSURANCE

(This Insurance Is On A Claims Made Basis)

THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY PROVIDED. PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the Insured to pay the Deductible herein and in reliance upon all statements made and information in the application, which is attached hereto and made a part of this Policy, and subject to all the terms and conditions of this Policy, the Company agrees with the Insured as follows:

I. COVERAGE

Coverage-Payment and Claims Made Provision

The Company shall pay on behalf of the Insured any Loss and Claim Expenses in excess of the Deductible amount and subject to the Limit of Liability as the Insured acting in the profession described in Item 3 of the Declarations shall become legally obligated to pay for Claim or Claims first made against the Insured during the Policy Period by reason of any Wrongful Act by an Insured provided always that the Insured has no knowledge of such Wrongful Act prior to the Inception Date of this Policy and further provided that such Wrongful Act took place subsequent to the Retroactive Date set forth in Item 8 of the Declarations.

II. DEFINITIONS

Whenever used in this Policy, the following terms or words are defined as follows:

a) Policy Period

"Policy Period" shall mean the period from the Inception Date of this Policy to its Expiration Date as set forth in Item 7 of the Declarations or its earlier termination date, if any.

b) Insured

"Insured" or "Insureds" shall mean

- 1) The Named Insured as designated in Item 1 of the Declarations;
- 2) Any partner, executive officer, director or employee of the Named Insured while acting within the scope of their duties on behalf of the Named Insured;
- 3) Any former partner, executive officer, director or employee of the Named Insured while acting within the scope of their duties on behalf of the Named Insured;
- 4) The estate, the heirs, assigns or legal representatives in the event of death or incompetency of any individual Insured under this Policy.

c) **Claim**

"Claim" shall mean a demand received by the Insured for compensation of damages, including the service of suit or institution of arbitration proceedings against the Insured.

d) **Loss**

"Loss" shall mean a monetary judgment, award or settlement for damages including an award by a court of reasonable attorney's fees and costs to a party making Claim, but does not include fines, penalties or any matter uninsurable under the Law pursuant to which this Policy will be construed, nor the return of fees or charges for the services rendered or to be rendered.

e) **Wrongful Act**

"Wrongful Act" shall mean any actual or alleged error or omission or breach of duty committed or alleged to have been committed or for failure to render such professional services as are customarily rendered in the profession of the Insured as stated in Item 3 of the Declarations.

f) **Claim Expenses**

"Claim Expenses" shall mean (1) fees charged by an attorney designated by the Company and (2) all other fees, costs or expenses incurred in the investigation, adjustment, defense and appeal of a Claim if incurred by the Company or an attorney designated by the Company, or by the Insureds with the written consent of the Company. However, "Claim Expenses" do not include salary charges of regular employees or officers of the Company nor salary or wages of the Insureds, nor any fees, costs, or expenses incurred with respect to any criminal proceedings or actions against an Insured.

III. CLAIMS MADE EXTENSION CLAUSE

If during the Policy Period, the Insured first becomes aware of any specific and identifiable Wrongful Act and during the Policy Period gives written notice to the Company of:

- a) the specific Wrongful Act; and
- b) the damage which has or may result from such Wrongful Act; and
- c) the circumstances by which the Insured first became aware of such Wrongful Act;

then any Claim that is subsequently made against the Insured arising out of such Wrongful Act shall be deemed for the purposes of this insurance to have been made against the Insured during the Policy Period.

IV. EXCLUSIONS

This Policy does not apply either directly or indirectly to any Claim and Claim Expenses:

- a) Based upon or arising out of any dishonest, criminal, fraudulent, malicious or intentional Wrongful Acts, errors or omissions committed by or at the direction of the Insured.

- b) For liability arising out of the Insured's services and/or capacity as:
- 1) an officer, director, partner, trustee, or employee of a business enterprise not named in the Declarations or a charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust;
 - 2) a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto, or with respect to any employee benefit plan of an Insured.
- c) Made by any business enterprise which is operated, managed or owned, in whole or in part, by the Named Insured or the Named Insured's parent company or any affiliated, subsidiary or associate company.
- d) Arising out of infringement of patent, copyright or trademark.
- e) For bodily injury, sickness, disease or death of any person, or for emotional distress, mental anguish, or other similar injury or damage, or any injury to, or destruction of, any tangible property or loss of use resulting therefrom.
- f) Arising out of false arrest, humiliation, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, or malicious prosecution, libel, slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy.
- g) Based upon or arising out of discrimination with respect to a violation of any municipal, State or Federal Civil Rights law, regulation or ordinance.
- h) Based upon or arising out of a violation or alleged violation of the Securities Act of 1933 as amended, or the Securities Exchange Act of 1934 as amended, or any State Blue Sky or securities law or similar state or Federal statute and any regulation or order issued pursuant to any of the foregoing statutes, unless endorsed hereon.
- i) For the liability of others assumed by the Insured under any oral or written contract or agreement, unless such liability would have attached to the Insured even in the absence of such agreement.
- j) Based upon the Insured's failure to procure or maintain adequate insurance or bonds, or any Claim arising out of the Insured's failure to comply with any law with respect to the Insured's employees concerning Workers' Compensation, Unemployment Insurance, Social Security or Disability Benefits or any similar law.
- k) Based upon the Employee Retirement Income Security Act of 1974 or similar provisions of any Federal, State or local statutory law or common law.
- l) For actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder.
- m) Based upon assertions, allegations, causes of action or demands whatsoever by or on behalf of an Insured or Insureds under this Policy against another Insured or Insureds hereunder.

- n) Based upon the actual or alleged performance or the failure to perform by the Insureds any professional services as an attorney, or the actual or alleged performance or failure to perform any professional services as an attorney by any person or entity retained or employed by the Insureds.
- o) Due to, based upon or arising out of, directly or indirectly, resulting from or in consequence of, or in any way involving seepage, pollution or contamination of any kind.

V. WAIVER OF EXCLUSIONS AND CONDITIONS

Whenever coverage under any provision of this Policy would be excluded, suspended or lost:

- a) because of any exclusion relating to dishonest, criminal, fraudulent, malicious or intentional Wrongful Acts or omissions by an Insured and with respect to which any other Insured did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof; or
- b) because of non-compliance with any condition relating to giving of notice to the Company with respect to which any other Insured shall be in default, solely because of the default or concealment of the default by any other Insured responsible for the loss or damage otherwise insured hereunder;

the Company agrees that such insurance as would otherwise be afforded under this Policy shall continue in effect with respect to each and every Insured who did not personally commit or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts or omissions described in any such exclusion or condition; provided that if the condition be one with which such Insured can comply, after receiving knowledge thereof, the Insured entitled to the benefit of this Waiver of Exclusions and Conditions shall comply with such condition promptly after obtaining knowledge of the failure of any other Insured or employee to comply therewith.

VI. LIMITS OF LIABILITY

- a) **Deductible**
The Deductible amount stated in the Declarations shall be paid by the Insured and shall apply to each Claim and shall include Claim Expenses.
- b) **Multiple Claims**
One or more Claims based upon or arising out of the same Wrongful Act or interrelated Wrongful Acts by one or more of the Insureds shall be considered a single Claim.
- c) **Limit of Liability**
Subject to the foregoing, the Company's total liability for Loss including Claim Expenses resulting from all Claims first made against the Insureds during the Policy Period shall not exceed the amount stated in the Declarations as "Limit of Liability," regardless of the time when such payment is made. The inclusion of more than one Insured hereunder shall not operate to either increase the amount of the applicable Deductible nor the amount of the Company's Limit of Liability. The Limit of Liability shall be excess of the Deductible amount.

d) **Exhaustion of Limits of Liability**

The Company will not be liable to pay any Loss or Claim Expenses or continue the defense of any Claim, after the Limit of Liability has been exhausted.

e) **Allocation of Claim Expenses**

In the event that any portion of a Claim does not come within the coverage afforded by this Policy, the Company shall be entitled to an allocation of Claim Expenses incurred on behalf of the Insureds based upon the ratio of the number of counts, causes of action or allegations for which coverage is afforded under this Policy as compared to the number of such counts, causes of action or allegations which are not within the scope of coverage. The Company shall not be required or obligated to pay that portion of Claim Expenses allocated to those counts, causes of action, or allegations which are not within the scope of coverage herein.

VII. TERRITORY

The insurance afforded applies worldwide, provided that suit is brought or Claim is made within the United States, its territories and possessions or Canada.

VIII. CONDITIONS

a) **Insured's Duties In the Event of Claim, Arbitration or Suit**

- 1) In the event of any Claim made against the Insured, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the Insured to the individual named in Item 6 of the Declarations as soon as practicable.
- 2) If the institution of arbitration proceedings or suit is brought against the Insured, the Insured shall immediately forward to the individual named in Item 6 of the Declarations every demand, notice, summons or other process received by the Insured or his representative.

b) **Assistance and Cooperation of the Insured**

The Insured shall cooperate with the Company and its representatives and upon the Company's request shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, all without charge to the Company. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which the Insured may have. The Insured shall not, except at his own cost, make any payment, admit any liability, settle any Claims, assume any obligation or incur any expense without the written consent of the Company.

c) **Settlement of Claim**

The Company shall not settle any Claim without the consent of the Insured. If, however, the Insured shall refuse to consent to any settlement recommended by the Company and shall elect to contest the Claim or continue any legal proceedings in connection with such Claim, then the Company's liability for the Claim shall not exceed the amount for which the Claim could have been so settled plus Claim Expenses incurred up to the date of such refusal. Such amounts are subject to the provisions of Clause VI, Limits of Liability.

d) **Audit**

The Company may examine and audit the Insured's books and records at any time during the Policy Period and after the final termination of this Policy, as far as they relate to the subject matter of this Policy.

e) **Subrogation**

In the event of any Claim or payment under this insurance, the Company shall be subrogated to the extent of such payment to all rights of recovery therefor, and the Insureds shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit in the name of the Insureds. The Insureds shall do nothing after Claim is made against them to prejudice such rights. Any recovery shall first be paid to the Company to the extent of any Loss or Claim Expenses paid by the Company, with the balance paid to the Insured. However, no subrogation shall be had against any Insured unless such Insured is excluded from coverage by reason of Exclusion IV (a).

f) **Other Insurance**

This Policy shall be excess insurance over any other valid and collectable insurance available to the Insured whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limit of Liability provided in this Policy.

g) **Cancellation**

This Policy may be cancelled by the Named Insured by surrender thereof to the Company or by mailing written notice stating when thereafter such cancellation shall be effective. If cancelled by the Insured, the Company shall retain the customary short rate proportion of the earned premium. This Policy may also be cancelled, with or without the return by tender of the unearned premium, by or on behalf of the Company by delivering to the Named Insured at the address set forth in the Declarations or by sending to the Named Insured by mail, registered or unregistered, at the address in the Declarations not less than thirty (30) days (or ten (10) days in the event of non-payment of premium) written notice stating when the cancellation shall be effective. If cancelled by the Company, the Company shall retain the pro rata portion of the earned premium. For the purpose of this Policy, notice of cancellation given to the Named Insured by the Company or given to the Company by the Named Insured pursuant to this paragraph shall be deemed to be notice on behalf of all Insureds hereunder.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction hereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

h) Extension of Policy Period

In the event of cancellation or non-renewal of this Policy in its entirety by the Company, this Policy may be extended for the additional period as indicated in Item 11 of the Declarations, for a premium based upon the percentage as indicated in Item 12 of the Declarations of the total premium, for Claims first made against the Insured during the said extension period provided:

- 1) The Wrongful Act giving rise to such Claim is committed or alleged to have been committed prior to the effective date of the cancellation or the original expiration date, whichever is applicable, and which would be otherwise insured by this Policy; and
- 2) Written notice of the exercise of this option is given by the Named Insured in Item 1 of the Declarations to the Company within ten (10) days after the effective date of cancellation or non-renewal; and
- 3) Such additional period shall be deemed part of the expiring Policy Period and not an addition thereto; and
- 4) For purposes of such additional period, coverage shall be applicable only with respect to Claims first made against the Insureds during such additional period. The provisions of Clause III of this Policy shall not be applicable to such additional period.

The quotation of a renewal premium higher than the expiring premium or a change in other terms or conditions shall not be deemed to be a cancellation or non-renewal by the Company.

i) Action Against the Company

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the Insured to determine the Insured's liability, nor shall the Company be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

j) Assignment

No assignment of interest under this Policy shall bind the Company unless its prior written consent is endorsed hereon.

k) Changes

Notice to or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy, nor estop the Company from asserting any rights under the terms of this Policy. The terms of this Policy shall not be waived or changed, except by endorsement issued to form a part of this Policy, signed by an authorized representative of the Company.

l) Application

By acceptance of this Policy, the Insureds agree that the statements in the application are personal representations, that they shall be deemed material and that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the Insureds and the Company or any of their agents relating to this insurance.

m) False or Fraudulent Claims

If any Insured shall commit fraud in proffering any Claim as regards amount or otherwise, this insurance shall become void as to such Insured from the date such fraudulent Claim is proffered.