



40ActPLUSSM

Pension and Welfare Benefit Plan
Fiduciary Liability Coverage Part

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PENSION AND WELFARE BENEFIT PLAN FIDUCIARY LIABILITY COVERAGE PART

NOTICE: THE COVERAGE AFFORDED UNDER THIS COVERAGE PART IS CLAIMS MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD," OR, IF PURCHASED, THE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS UNDER THIS COVERAGE PART WILL BE REDUCED BY THE PAYMENT OF "DEFENSE EXPENSES," AND "DEFENSE EXPENSES" WILL BE APPLIED AGAINST THE RETENTION. THE COVERAGE AFFORDED UNDER THIS COVERAGE PART DIFFERS IN SOME RESPECTS FROM THAT AFFORDED UNDER OTHER POLICIES. PLEASE READ THE ENTIRE POLICY, INCLUDING THE GENERAL TERMS AND CONDITIONS AND THIS COVERAGE PART, CAREFULLY.

Subject to the limit of liability and to all of the terms, conditions and limitations of this Policy and any endorsements to this Policy, Executive Risk Indemnity Inc. (the "Underwriter") and the Insureds agree as follows:

I. INSURING AGREEMENT

The Underwriter will pay on behalf of the **Insured Loss** from **Claims** first made against the **Insured** during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Wrongful Acts**.

II. DEFINITIONS

(A) "**Administration**" means:

- (1) giving counsel to employees with respect to **Employee Benefits**;
- (2) interpreting **Employee Benefits**;
- (3) handling records in connection with **Employee Benefits**; or
- (4) effecting enrollment, termination or cancelation of employees under an **Employee Benefits** program.

(B) "**Employee Benefits**" means any **Plan**, workers' compensation insurance, unemployment insurance, Social Security or disability benefits.

- (C) **“Insured”** means:
- (1) any **Plan**;
 - (2) any **Sponsor Organization**; and
 - (3) any natural person who at any time holds or shall have held the position of trustee of any **Plan** or director, officer, trustee, partner or employee of any **Plan** or of any **Sponsor Organization**. In the event of the death, incapacity or bankruptcy of such a natural person, any **Claim** against the estate, heirs, legal representatives or assigns of such person for a **Wrongful Act** of such person will be deemed to be a **Claim** against such person.
- (D) **“Loss,”** as defined in GENERAL TERMS AND CONDITIONS (A), shall be deemed to include, for purposes of this Coverage Part:
- (1) civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), for inadvertent violation of Section 406 of ERISA, and civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty; and
 - (2) benefits due or to become due under the terms of any **Plan**, but only if and to the extent that recovery for such benefits is based on a **Wrongful Act** and is payable as the personal obligation of an **Insured** who is a natural person; provided that, for the purposes of this COVERAGE PART, **Loss** shall include **Defense Expenses** with respect to any **Claim** seeking benefits due or to become due under the terms of any **Plan**.
- (E) **“Pension Benefit Plan”** means any employee pension benefit **Plan**, as such term is defined in ERISA.
- (F) **“Plan”** means:
- (1) any **Welfare Benefit Plan** which was, is now, or becomes sponsored by any **Sponsor Organization**;
 - (2) the **Pension Benefit Plan(s)** identified in the Designated **Plan** Endorsement attached to this Policy, and any trust established to hold the assets of any such **Pension Benefit Plan(s)**;

- (3) any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, which was formerly sponsored by any **Sponsor Organization** and which was sold, spun off or terminated before the Inception Date in ITEM 2(a) of the Declarations, but only if coverage was available in respect of such **Pension Benefit Plan** under any policy of which this Policy is a renewal;
 - (4) any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, created during the **Policy Period** by any **Sponsor Organization** or by any interest owned or controlled by such **Sponsor Organization** for the employees thereof, but only if the **Insureds** give the Underwriter written notice of the creation of such **Plan** within ninety (90) days of the effective date thereof; and
 - (5) any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, of any entity acquired during the **Policy Period** through the merger, consolidation or otherwise by any **Sponsor Organization** or by any interest owned or controlled by such **Sponsor Organization**, but only if:
 - (a) the **Insureds** give the Underwriter written notice of such acquisition as soon as practicable after the effective date thereof;
 - (b) the **Insureds** give the Underwriter such additional information with respect thereto as the Underwriter may reasonably require; and
 - (c) the Underwriter has specifically agreed by written endorsement to provide coverage in respect of such **Plan** and the **Insureds** have accepted any additional terms, conditions and limitations of coverage, and paid any additional premium, that the Underwriter, in its sole discretion, shall have deemed appropriate in connection therewith.
- (G) “**Sponsor Organization**” means the **Named Insured** or any **Subsidiary**.
- (H) “**Welfare Benefit Plan**” means any employee welfare benefit plan, as such term is defined in Section 3 of ERISA.
- (I) “**Wrongful Act**” means any actual or alleged:
- (1) breach of the responsibilities, obligations or duties imposed upon fiduciaries of any **Plan** by ERISA or the common law or statutory law of any jurisdiction governing such **Plan**; or

- (2) negligent act, error or omission by an **Insured** in the **Administration of Employee Benefits**.

III. EXCLUSIONS

This Coverage Part does not apply to any **Claim**:

(A) brought about or contributed to in fact by:

- (1) any dishonest, fraudulent or criminal act or omission by an **Insured**; or
- (2) any willful or intentional violation of any statute, rule or law by an **Insured**;
or
- (3) the gaining of any profit, remuneration or advantage by an **Insured** to which the **Insured** was not legally entitled;

provided, that this EXCLUSION (A) shall only apply to an **Insured** if it is established that the **Insured** participated in or acquiesced in the dishonest, fraudulent or criminal act or omission, the willful or intentional violation, or the gaining of profit, remuneration or advantage.

(B) based on or directly or indirectly arising out of or resulting from:

- (1) any **Wrongful Act** or any matter, fact, circumstance, transaction, or event which has been the subject of, or which is logically or causally connected to, any **Claim** made or notice given under any policy of insurance prior to the Inception Date set forth in ITEM 2(a) of the Declarations; or
- (2) any **Wrongful Act** or any matter, fact, circumstance, transaction, or event which was described in the **Application** or in any application for a policy of which this Policy is a renewal or replacement; or
- (3) any civil, criminal, administrative or arbitration proceeding as to which any **Insured** has received written notice prior to the Inception Date set forth in ITEM 2(a) of the Declarations, or any matter, fact, circumstance, transaction or event underlying or alleged in such proceeding;

- (C) based on or directly or indirectly arising out of or resulting from:
- (1) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants, or
 - (2) any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance;
 - (3) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;
- (D) for any actual or alleged invasion of privacy, malicious use or abuse of process, malicious prosecution, wrongful entry or eviction, false arrest, false imprisonment, assault or battery;
- (E) for any bodily injury, emotional distress, mental anguish, sickness, disease or death of any person, or loss of consortium, support, companionship or services of any kind resulting therefrom;
- (F) for damage to, destruction of, loss of, or loss of use of, tangible property;
- (G) for libel, slander, oral or written publication of defamatory or disparaging material;
- (H) for an **Insured's** liability under any contract or agreement, regardless of whether such liability is direct or assumed; provided, that this EXCLUSION (H) will not apply to liability arising out of an Agreement and Declaration of Trust or similar agreement creating or establishing a **Plan**;
- (I) made by or on behalf of a fidelity insurer against a natural person whose conduct has resulted in a loss which has been paid under a fidelity bond;
- (J) based on or directly or indirectly arising out of or resulting from any actual or alleged failure by any **Insured** to comply with any law, rule or regulation concerning workers' compensation, unemployment insurance, Social Security or disability benefits, whether or not such failure to comply is willful;

- (K) for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**, or for the return to any employer of any contributions if such amounts are or could be chargeable to a **Plan**.

IV. CONDITIONS

(A) Conversion of Coverage under Certain Circumstances:

In addition to, and not by way of limitation of, GENERAL TERMS AND CONDITIONS (G):

- (1) There will be no coverage under this Policy for **Claims** for **Wrongful Acts** with respect to any **Plan** which is or has been sold, spun off or terminated if such **Wrongful Acts** are committed or allegedly committed by any **Insured** after the effective date of such sale, spin-off or termination. The **Sponsor Organization** shall give the Underwriter written notice of the sale, spin-off or termination of any **Plan** during the **Policy Period** as soon as practicable after the effective date thereof.
- (2) If, during the **Policy Period**, any of the following events occurs:
- (a) the **Sponsor Organization** of any **Plan** is acquired, or all or substantially all of the assets of the **Sponsor Organization** are acquired, by another entity, or the **Sponsor Organization** is merged into, or consolidated with, another entity such that the **Sponsor Organization** is not the surviving entity, or
 - (b) any person, entity or affiliated group of persons or entities obtains the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Sponsor Organization** of any **Plan**;

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed or allegedly committed before such event by such **Sponsor Organization**, or by any **Plan(s)** of such **Sponsor Organization**, or by any natural person who holds or shall have held the position of trustee of any such **Plan(s)** or director, officer or employee of any such **Plan(s)** or of such **Sponsor Organization**, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed or allegedly committed after such event by any such **Insured**. After any such event, this Policy may not be canceled, regardless of GENERAL TERMS AND CONDITIONS (F)(2), and the entire premium for the Policy will be deemed fully earned.

In witness whereof, the Underwriter has caused this Policy to be executed on the
Declarations Page.

Henry A. Aubit
Secretary


President