

Fiduciary Liability Coverage Section

CLAIMS MADE NOTICE FOR POLICY

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY "CLAIM" FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this **Policy**, the **Insurer** and **Insureds** agree as follows:

I. Insuring Agreement

Fiduciary Liability Insurance

This **Policy** shall pay on behalf of the **Insureds** all **Loss** arising from any **Claim** that is first made against the **Insureds** during the **Policy Period** and reported in writing to the **Insurer** during the **Policy Period** or the Extended Reporting Period (if applicable), for any actual or alleged **Wrongful Act**.

II. Extended Reporting Period

Refer to Common Policy Terms and Conditions Coverage Section.

III. Definitions

In addition to the Definitions listed in section III. of the Common Policy Terms and Conditions Section, whenever printed in boldface type, and whether in the singular or plural form, in this **Coverage Section** the following terms shall have the meanings indicated below.

A. Administration means:

1. giving advice, counsel or interpretation to employees regarding any **Employee Benefits**; or
2. handling of records affecting enrollment, termination or cancellation of employees under any **Employee Benefits**.

B. Claim means:

1. a written demand for monetary or non-monetary relief including, but not limited to, a civil or criminal proceeding;
2. a formal administrative or regulatory proceeding; or
3. a formal investigation brought or initiated by a federal, state or local government agency, including but not limited to, the Department of Labor or the Pension Benefit Guaranty Corporation.

Claim shall not include any grievance or arbitration subject to a collective bargaining agreement. A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

C. Costs of Defense means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered or potentially covered **Claim** against the **Insureds**, but excluding salaries, wages, overhead or benefit expenses associated with any **Insured**, or any amount covered by the duty to defend obligation of any other insurer.

D. Damages means a monetary judgment, award or settlement, pre-judgment interest and post-judgment interest; provided, however, **Damages** shall not include:

1. taxes, civil or criminal fines, or penalties imposed by law, except the 5 percent or less, or the 20 percent or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or (l), respectively, of **ERISA**;
2. any amount for which an **Insured Entity** or an **Insured Person** is absolved from payment by reason of any covenant, agreement (other than indemnification of an **Insured Person** by the **Insured Entity**) or court order; or
3. any matter deemed uninsurable under the law pursuant to which this **Policy** shall be construed.

Damages also means, where insurable, punitive, or exemplary damages, or any multiplied damages award in excess of the amount so multiplied. Such coverage for punitive, exemplary or multiplied damages is part of and not in addition to the Limit of Liability, and any payment of such damages shall serve to reduce the Limit of Liability. Only for the purpose of resolving any dispute between the **Insurer** and the **Insured** regarding whether such punitive, exemplary or multiplied damages are insurable under this **Policy**, the law of the jurisdiction most favorable to the insurability of those damages shall control, provided that such jurisdiction is where:

1. those damages were awarded or imposed;
2. any **Wrongful Act** occurred for which such damages were awarded or imposed;
3. the **Insured** resides, is incorporated or has its principal place of business; or
4. the **Insurer** is incorporated or has its principal place of business.

E. Employee Benefit Plan means:

1. any employee welfare benefit plan, as defined by **ERISA**, which is sponsored solely by the **Insured Entity** or jointly by the **Insured Entity** and a labor organization exclusively for the benefit of employees of the **Insured Entity**; or
2. any employee pension benefit plan or pension plan, as defined by **ERISA**, which is sponsored solely by the **Insured Entity** or jointly by the **Insured Entity** and a labor organization exclusively for the benefit of employees of the **Insured Entity**, identified in the **Application** attached to this **Policy**.

Employee Benefit Plan(s) shall not include any Deferred Compensation Plan, Defined Benefit Plan, Employee Stock Ownership Plan, Multi Employer Plan, or Multiple Employer Plan.

F. Employee Benefits means benefits provided under an **Employee Benefit Plan**, workers' compensation insurance, unemployment insurance, social security, disability insurance and the Consolidated Omnibus Budget Reconciliation Act of 1985, including amendments thereto, exclusively for the benefit of the employees of the **Insured Entity**.

G. ERISA means the Employee Retirement Income Security Act of 1974, including amendments thereto.

H. Insured means the **Insured Entity**, the **Employee Benefit Plans** and the **Insured Persons**.

I. Insured Person means:

1. any past, present or future duly elected or appointed directors, trustees, officers, or employees of the **Insured Entity**, or of any **Employee Benefit Plan**, while acting in their capacity as a fiduciary;
2. the estates, heirs, or legal representatives of deceased **Insured Persons**, and the legal representatives of **Insured Persons** in the event of incompetency, insolvency or bankruptcy, who were **Insured Persons** at the time the **Wrongful Act** upon which such **Claims** are based were committed; or
3. the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an individual **Insured Person** for a **Claim** arising solely out of his or her status as the spouse of an individual **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the individual **Insured Person** and the spouse, or property transferred from the individual **Insured Person** to the spouse; provided, however, this extension shall not afford coverage for any **Claim** for any **Wrongful Act** of the spouse, but shall apply only to **Claims** arising out of any **Wrongful Act** of an individual **Insured Person**.

J. Loss means **Damages** and **Costs of Defense**.

K. Prior Acts Date means the date set forth in Item 7. iii. of the Declarations.

L. Prior and Pending Litigation Date means the date set forth in Item 8. iii. of the Declarations.

M. Wrongful Act means:

1. any actual or alleged breach of the responsibilities, obligations or duties imposed by **ERISA** upon **Insureds** in their capacity as fiduciaries of any **Employee Benefit Plans**;
2. any actual or alleged negligent act, error or omission of any **Insured** in the **Administration** of any **Employee Benefits**; or
3. any other matter claimed against an **Insured** solely by reason of their services as a fiduciary of an **Employee Benefit Plan**.

IV. Exclusions

In addition to the Exclusions listed in section IV. of the Common Policy Terms and Conditions Section, the **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against any **Insured**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the gaining of any profit or advantage to which an **Insured** was not legally entitled;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any criminal or deliberate fraudulent act;
- C. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving payments to an **Insured** of any remuneration without the previous approval of the security holders of the **Insured Entity**, which payment without such previous approval shall be held to have been illegal;
- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged **Wrongful Act** or **Related Wrongful Act** committed or allegedly committed before the **Prior Acts Date** applicable to this **Coverage Section**;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 - 1. any prior or pending litigation, administrative or arbitration proceeding, or investigation as of the **Prior and Pending Litigation Date**; or
 - 2. any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, administrative or arbitration proceeding, or investigation; regardless of the legal theory upon which such **Claim** is predicated;
- F. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged:
 - 1. physical injury to or destruction of any tangible property, including the loss of use thereof;
 - 2. bodily injury, sickness, disease, death, assault or battery of any person; or
 - 3. invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel, slander, mental anguish, humiliation, emotional distress, oral or written publication of defamatory or disparaging material;
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged discrimination, retaliation or wrongful termination of employment; provided, however, this exclusion shall not apply to **Claims** asserted under Section 510 of **ERISA**;
- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged liability of others assumed by any **Insured** under any oral, written or implied contract or agreement; provided, however, this exclusion shall not apply to the extent that:
 - 1. an **Insured** would have been liable in the absence of the contract or agreement; or
 - 2. the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Employee Benefit Plans** were established;
- I. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of responsibilities, duties or obligations imposed on an **Insured** under any workers' compensation, social security, disability benefits, or unemployment compensation law, or any similar provisions of any federal, state, local or foreign statutory or common law, the Worker's Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the National Labor Relations Act, including amendments thereto, or any similar or related law other than the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Health Insurance Portability and Accountability Act of 1996;
- J. which constitutes:
 - 1. the return or reversion to an employer of any contribution or asset of an **Employee Benefit Plan**;
 - 2. costs of compliance with any order for, grant of, or agreement to provide non-monetary relief;
 - 3. benefits due or to become due under the terms of any **Employee Benefit Plan**, or benefits which would be due under the terms of any **Employee Benefit Plan** if such terms complied with all applicable law, except to the extent that:
 - a. an **Insured** is a natural person and the benefits due are payable by such **Insured** as a personal obligation; and
 - b. recovery for the benefits is based upon a covered **Wrongful Act**;

provided, however, the **Insurer** will provide a defense for any such **Claims**, without any liability by the **Insurer** to pay such sums that any **Insured** shall become legally obligated to pay as **Damages**;

- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the actual or alleged failure to collect an employer's contributions owed to an **Employee Benefit Plan** unless the failure is because of negligence of any **Insured**; provided, however, the **Insurer** will provide a defense for any such **Claims**, without any liability by the **Insurer** to pay such sums that any **Insured** shall become legally obligated to pay as **Damages**.

The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the Exclusions.

V. Changes in Exposure

A. Acquisition or Creation of a Plan

If during this **Policy Period** the **Insured Entity** forms or acquires any employee welfare benefit plan, any employee pension benefit plan or any pension plan, as defined by **ERISA**, that is not a Deferred Compensation Plan, Employee Stock Ownership Plan, a Multi Employer Plan, a Multiple Employer Plan, or a Defined Benefit Plan, which is then sponsored solely by the **Insured Entity** or jointly by the **Insured Entity** and a labor organization exclusively for the benefit of the employees of the **Insured Entity**, then this **Policy** shall provide coverage pursuant to this **Coverage Section**:

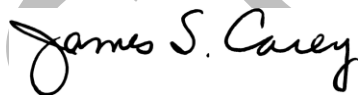
1. automatically for an employee welfare benefit plan, as defined by **ERISA**, or
2. for an employee pension benefit plan or pension plan, as defined by **ERISA**, but only upon the condition that within 45 days of it becoming an **Employee Benefit Plan**, the **Named Insured** shall have provided the **Insurer** with full particulars of the new **Employee Benefit Plan** and agreed to any additional premium and/or amendment of the provisions of this **Policy** required by the **Insurer** relating to such new **Employee Benefit Plan**. Further, coverage as shall be afforded to the new **Employee Benefit Plan** is conditioned upon the **Named Insured** paying when due any additional premium required by the **Insurer** relating to such new **Employee Benefit Plan**.

In all events, coverage as is afforded pursuant to this **Coverage Section** with respect to a **Claim** made against an **Employee Benefit Plan** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Employee Benefit Plan** became an **Employee Benefit Plan** and prior to the time that such **Employee Benefit Plan** ceased to be an **Employee Benefit Plan**.

B. Sale or Termination of a Plan

If the **Insured Entity** sells or terminates an **Employee Benefit Plan** during the **Policy period**, then coverage under this **Coverage Section** shall continue until termination of this **Policy Period**, but solely with respect to the **Wrongful Acts** committed or allegedly committed by an **Insured** prior to the date the **Employee Benefit Plan** was sold or terminated.

In witness whereof, the **Insurer** has caused this **Policy** to be signed by its President and Chief Executive Officer and Secretary, but this **Policy** shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President and Chief Executive Officer



Secretary