

# National Casualty Company

## MEDIA SPECIAL PERILS POLICY FILM AND PROGRAM PRODUCER COVERAGE

(Claim Expense Within the Policy Limit)

### IMPORTANT NOTICE

**CLAIM EXPENSE** IS INCLUDED IN THE POLICY LIMIT AND THE SELF-INSURED RETENTION.

ALL WORDS OR PHRASES, OTHER THAN CAPTIONS, PRINTED IN BOLD FACE ARE DEFINED IN THE POLICY.

VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED.

In consideration of the payment of the premium and in reliance on the statements in the Declarations and subject to all other terms of this policy, the Company designated in the Declarations agrees with the **Insured** named in the Declarations to the following:

#### I. COVERAGE AGREEMENTS

The Company shall pay on behalf of the **Insured** all **damages** and **claim expense** in excess of the Self-Insured Retention and within the Policy Limit which the **Insured** becomes legally obligated to pay because of liability imposed by law or **assumed under contract** as a result of one or more **claims** arising out of:

- A. any form of defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage or outrageous conduct;
- B. any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness;
- C. infringement of title, slogan, trademark, trade name, trade dress, service mark, or service name;
- D. infringement of copyright, plagiarism, piracy or misappropriation of ideas under implied contract;
- E. **unfair competition** but only when alleged in conjunction with the types of **claims** named in C and D above;

committed in the utterance or dissemination of **matter** by or with permission of the **Insured** during the Policy Period in **film and program production activities**, regardless of when **claim** is made or suit is brought.

#### II. EXCLUSIONS

The Company shall not be obligated to defend or to pay **damages** or **claim expense** resulting from claims:

- A. made by any present, former or prospective employee, partner, joint venturer, co-venturer, officer or director of the **Insured** or any independent contractor supplying **matter**, material or services to the **Insured**, but only with respect to **claims** involving disputes over the ownership or exercise of rights in the **matter**, material or services supplied;

- B. for or arising from any breach of contract other than liability **assumed under contract**;
- C. for or arising from false **advertising** or misrepresentation in **advertising** or for **unfair competition** based thereon but only as respects intentional, false, misleading, deceptive, fraudulent or misrepresenting statements in **advertising** about the **Insured's** own product or service;
- D. for or arising from infringement of patent;
- E. for or arising from antitrust, restraint of trade, or unfair or deceptive business practices;
- F. for or arising from employer-employee relations or other usual or ordinary business transactions of the **Insured** that do not involve the utterance or dissemination of **matter**;
- G. for or arising from any act that a jury or court finds to be dishonest, fraudulent or criminal;
- H. for or arising from any actions, decisions, orders or proceedings by the Federal Trade Commission, Federal Communications Commission or any other federal, state, or local governmental agency;
- I. for or arising from **bodily injury** or **property damage**;
- J. for or arising from any utterance or dissemination of **matter** or any act of repetitions thereof committed prior to the effective date of the first policy issued by the Company or after the termination date of the last policy issued by the Company;
- K. for or arising from **unfair competition** not directly related to and alleged in conjunction with the torts specified in Paragraphs C and D of the Coverage Agreements;
- L. arising from merchandising, unless specifically endorsed hereon;
- M. arising from the "colorization" of any "black and white" film product unless specifically endorsed to this policy;
- N. by any writer, composer, lyricist, artist or other party under contract with the **Insured**, or their heirs or assigns, seeking against the **Insured** an accounting or recovery of profits, royalties, fees or other monies claimed to be due from the **Insured** or any claim or suit by any such party against the **Insured** claiming excessive or unwarranted fees, compensation or other charges of any kind made by the **Insured**;
- O. arising from the title of any **scheduled production** until a satisfactory Title Report is submitted to and approved by the Company and endorsed hereon.

### III. POLICY LIMIT AND SELF-INSURED RETENTION

#### A. Policy Limit

The Policy Limit stated in the Declarations shall be the most the Company will pay for all **damages** and **claim expense** during any one Policy Period, regardless of the number of:

1. **Insureds** under this policy;
2. broadcasts, telecasts, cablecasts, exhibitions, distributions or advertisements;
3. acts related to **film and program production activities**;
4. **scheduled production(s)**;
5. policies issued by the Company;
6. persons or organizations who sustain **damages**; or
7. **claims** made or suits brought.

**B. Self-Insured Retention**

The Self-Insured Retention stated in the Declarations shall be those amounts first incurred and payable by the **Insured** for **each loss**. The Self-Insured Retention applies to both **damages** and **claim expense** or any combination thereof.

The Policy Limit shall be in excess of the Self-Insured Retention amount stated in the Declarations. The Self-Insured Retention shall not reduce the Policy Limit.

**C. Application of Policy Limit and Self-Insured Retention to Each Loss**

The Policy Limit and Self-Insured Retention applying to **each loss** shall be the Policy Limit and Self-Insured Retention in effect on the date on which **matter** is first uttered or disseminated.

**IV. DEFINITIONS**

"**Additional Insured**" means any agent or independent contractor providing services or **matter** through or under the direction of the **Named Insured** and who has been added to this policy by endorsement.

"**Advertising**" means **advertising**, publicity, or promotion of any kind of **scheduled productions**.

"**Assumed under contract**" means liability assumed by the **Insured** in the form of hold harmless or indemnity agreements executed with any party, but only as respects:

- A. the types of **claims** specified in the Coverage Agreements; and
- B. **matter** furnished by the **Insured**.

Examples of **assumed under contract** are hold harmless or indemnity agreements with distributors, advertising agencies, publishers, broadcasting companies, networks, cable television systems, or any entities distributing **matter**.

"**Bodily injury**" means **bodily injury**, sickness, or disease, including death resulting therefrom.

"**Claim**" means a demand or a suit for money or services, even if any of the allegations of the **claim** are groundless, false or fraudulent. **Claim** also means a suit seeking injunctive relief relating to the types of **claims** specified in the Coverage Agreements.

"**Claim expense**" means, when authorized and approved by the Company:

- A. fees charged by an attorney in defense of a **claim**, including legal expenses necessitated by a demand for a retraction or correction;
- B. all other fees, costs and expenses which result from the investigation, discovery, adjustment, defense, settlement or appeal of a **claim**;
- C. interest on any part of a judgment not exceeding the Policy Limit that accrues after the entry of the judgment and before the Company has paid or tendered or deposited the applicable judgment amount in court; and
- D. premiums on appeal bonds required as a result of a covered **claim** and premiums on bonds to release attachments for a bond amount not exceeding the Policy Limit, but the Company has no obligation to apply or furnish any such bonds.

"**Claim expense**" does not include salary charges or expenses of regular employees of the **Insured**.

"**Damages**" means all forms of monetary **damages**, including actual **damages**, statutory **damages** and punitive or exemplary **damages**, and legal expense or other costs included as part of a judgment or settlement.

"**Damages**" does not include:

- A. production costs, loss of profits, or the cost of recall, return, reproduction, reprinting or correction of **matter** by the **Insured**, any **Additional Insured** or any indemnitee; or
- B. fines and penalties, including governmental or criminal fines or penalties, or fines and penalties by ASCAP, SESAC, BMI or other music licensing organizations,

or any **claim expense** resulting therefrom.

"**Each loss**" means all **damages** and **claim expense** arising out of utterances or disseminations of matter on one or more dates during a Policy Period or Periods relating to the same subject, person, or class of persons, regardless of the number of repetitions, alterations, or forms of communication.

"**Film and program production activities**" means the preparation, production, publication, **advertising**, release, broadcast, telecast, exhibition, sale, licensing or distribution of a **scheduled production(s)**.

"**Insured**" means the **Named Insured** and any **subsidiary**, and each person who is a director, officer, stockholder, partner, trustee or employee thereof, but only while acting within the scope of their duties as such.

"**Matter**" means printed, audio, visual or informational content, and the use of such **matter** by others.

"**Named Insured**" means the person or organization named in the Declarations of the policy.

"**Property damage**" means:

- A. physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom; or
- B. loss of use of tangible property which has not been physically injured or destroyed.

"**Scheduled production(s)**" means the production(s) named in the Declarations or by endorsement.

"**Subsidiary**" means any entity that is wholly owned or more than 50% owned and controlled by the **Named Insured**.

"**Unfair competition**" means the misuse of an intellectual property right in **matter**.

## V. **CONDITIONS**

### A. **Time of Inception; Policy Period**

This policy will begin at 12:01 a.m. on the effective date shown in the Declarations. The policy will continue to apply until 12:01 a.m. on the expiration date also shown in the Declarations unless terminated at an earlier date.

### B. **Territory**

The territory of the policy is worldwide. If judgment is rendered or settlement is made denominated in a currency other than United States of America dollars, payment under this policy shall be made in United States dollars at the rate of exchange prevailing on the date the final judgment is rendered or the amount of the settlement is agreed upon.

### C. **Premium**

The **Named Insured** shall pay to the Company the annual and minimum premium stated in the Declarations. The premium may be adjusted at any time during the Policy Period or any

extensions based upon additions or deletions of media activities or entities or changes in the provisions of the policy as may be agreed upon by the **Named Insured** and the Company.

In the event the policy is canceled by the **Named Insured** on or after the release of a **scheduled production(s)**, the annual premium stated in the Declarations shall be fully earned.

#### D. Changes of Operations

This policy applies only to **scheduled production(s)** and related **advertising** listed at the effective date of this policy in the Declarations or by endorsement. This policy shall not apply to any additional productions unless, with the Company's consent, such productions are added by endorsement hereto. The **Named Insured** shall promptly pay any additional premium that may become due.

#### E. Defense and Settlement

##### 1. Defense of Claims

The Company shall have the right and the duty to defend any **claim** or suit against the **Insured** because of a covered **claim**, even if the allegations of the suit are groundless, false, or fraudulent. The Company will employ counsel to represent the **Insured**. The **Insured** may at any time consult with the Company with respect to selection of counsel.

##### 2. Insured's Duties in the Event of a Claim

- a. The **Named Insured** shall give prompt notice to the Company of any covered **claim** or suit.
- b. The **Insured** shall in all respects cooperate with the Company with respect to any **claim** for which insurance is afforded under this policy and, at the Company's request, assist in making settlements and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured**. The **Insured** shall attend hearings and trials, assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** and the counsel employed by the Company on the **Insured's** behalf shall comply with any claim guidelines or procedures requested by the Company.

##### 3. Settlements and Appeals

The Company may investigate and solicit settlement offers for any **claim** as it deems expedient. No offer to settle a **claim** for an amount in excess of the **Insured's** remaining Self-Insured Retention shall be accepted unless the **Insured** and the Company agree thereto by written agreement. The **Named Insured** may agree to any settlement for which the total cost of **damages** and **claim expense** associated therewith is less than the amount of the Self-Insured Retention.

In the event the **Insured** and the Company disagree with respect to the final disposition of any **claim**, the following provisions shall apply:

- a. If the **Named Insured** is willing to accept a settlement which is offered by a claimant or is unwilling to appeal from a judgment of a trial court, the Company shall have the right to litigate in lieu of such settlement or appeal from such judgment, provided that the Company has obtained the prior written consent of all excess carriers and the Company bears all costs and expenses, including incidental interest, of such litigation or appeal, any new trial ordered by an appellate court, and any increase in the judgment amount including incidental interest. An increase in the judgment amount in such instance shall not be applied against the **Named Insured's** Policy Limit.

- b. If the Company is willing to accept the judgment of the trial court, or appellate court, or any negotiated settlement or settlement offer, and the **Named Insured** is not willing to accept such judgment or settlement and providing the judgment or settlement is in excess of the **Named Insured's** remaining Self-Insured Retention, the Company may pay to the **Named Insured** the difference between the amount of said settlement or judgment and the **Named Insured's** remaining Self-Insured Retention, and shall thereby be relieved from further **damages** for that **claim** including the duty to defend and the payment of **claim expense**.

#### 4. **Confidential Sources**

The rights of an **Insured** under this policy shall not be prejudiced by the refusal of the **Named Insured**, or of any one for whose acts the **Named Insured** is legally liable, to reveal the identity of a confidential source in connection with a **claim** or suit under the policy.

#### F. **Retraction or Correction**

The **Insured** shall take such actions which, in the **Insured's** judgment, are deemed necessary and practicable to prevent or limit the dissemination of **matter** that is erroneous or untrue.

#### G. **Other Insurance**

The insurance afforded by this policy is excess over any other valid and collectible insurance available to the **Insured**, except insurance specifically arranged by the **Named Insured** to apply in excess of this insurance.

#### H. **Subrogation**

In the event of any payment under this policy, the Company shall be subrogated to all the **Insured's** rights to recovery therefor 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. The Company shall have no rights of subrogation against any **Insured** hereunder.

#### I. **Changes**

Notice to 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 policy or estop the Company from asserting any rights under the terms of this policy; nor shall the terms of this policy be waived or changed except by written endorsement issued to form a part of this policy.

#### J. **Assignment**

Assignment of any interest or right under this policy shall not bind the Company until its written consent is endorsed hereon.

#### K. **Action Against the Company**

1. 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 between the **Insured**, the claimant and the Company.
2. Any person or organization, or the legal representative thereof, who has secured such judgement or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy.

3. 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 its obligations hereunder.

**L. Cancellation and Nonrenewal**

**1. Cancellation**

This policy may be canceled by the **Named Insured** by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the Company by mailing to the **Named Insured**, at the address shown in this policy, written notice stating when, not less than 30 days thereafter, such cancellation shall be effective. If cancellation is a result of nonpayment of premium or Self-Insured Retention, the Company shall give written notice stating when, not less than ten days thereafter, such cancellation shall be effective.

If this policy is canceled prior to the expiration date and the minimum premium as stated in the Declarations does not apply, the premium due the **Named Insured** shall be:

- a. The pro rata unearned amount of the annual premium subject to a factor of .90, if such cancellation is by the **Named Insured**; or
- b. The pro rata unearned amount of the annual premium, if such cancellation is by the Company;

but the return of such premium to the **Named Insured** is not a condition of cancellation.

**2. Nonrenewal**

The Company may elect not to renew this policy by mailing or delivering written notice of nonrenewal to the **Named Insured's** last mailing address known to the Company. The Company will mail or deliver the notice at least 30 days before the expiration of the policy.

If notice of cancellation or nonrenewal is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

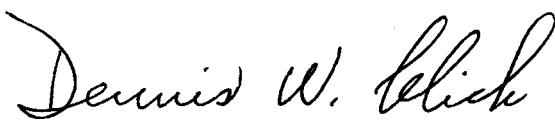
**M. Authorization**

The **Named Insured** shall be deemed the agent of all other **Insureds** with respect to negotiation of settlements, the decision to appeal or not to appeal any judgment, the payment of the premium and Self-Insured Retention, the giving and receiving of notices of cancellation and nonrenewal, and to receiving any return premium that may become payable under this policy.

**M. Declarations**

By acceptance of this policy, the **Named Insured** agrees that the statements in the Declarations are its representations and that this policy embodies all agreements existing between itself and the Company or its agents relating to this insurance.

In Witness Whereof, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



Secretary



President