

# PENSION AND WELFARE BENEFIT PLAN FIDUCIARY LIABILITY COVERAGE PART

THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE WITH DEFENSE EXPENSES AND COMPLIANCE COSTS INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

## I. INSURING AGREEMENT

- A. The Insurer shall pay on behalf of the **Insureds Loss** resulting from a **Claim** first made against the **Insureds** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Wrongful Act**.
- B. The Insurer shall pay on behalf of the **Insureds** all **Compliance Costs** incurred by the **Insureds** as a result of any **Compliance Request** first made by an **Insured** during the **Policy Period**. The Insurer shall have no duty to provide the **Insureds** with legal representation or to conduct any investigation in connection with any **Compliance Request** or any actual or alleged noncompliance of any **Plan** with any statute, rule or regulation.

## II. DEFINITIONS

- A. "**Administration**" means:
  1. handling records in connection with **Employee Benefits**;
  2. effecting enrollment, termination or cancellation of employees under an **Employee Benefits** program;
  3. giving counsel to employees with respect to **Employee Benefits**; or
  4. interpreting **Employee Benefits**.
- B. "**Claim**," as defined in the GENERAL DEFINITIONS C., shall include, for purposes of this Coverage Part:
  1. a written notice of the commencement of an investigation by the Department of Labor or the Pension Benefit Guaranty Corporation; or
  2. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;against an **Insured** for a **Wrongful Act**.
- C. "**Compliance Costs**" means:
  1. voluntary compliance fees, voluntary correction fees, compliance correction fees or sanctions paid to the Internal Revenue Service by the **Insureds** under any **Voluntary Compliance Program** in connection with the actual or alleged noncompliance of any **Plan** with any statute, rule or regulation; and
  2. reasonable costs, charges and expenses of attorneys, accountants and other professionals, if incurred solely in investigating and evaluating the actual or alleged noncompliance of any **Plan** with any statute, rule or regulation and effecting a resolution thereof under a **Voluntary Compliance Program**.

**Compliance Costs** will not include the **Company's** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or employees.

## PRIVATE COMPANY INSURANCE POLICY

- D. **“Compliance Request”** means a request for a compliance statement, correction statement or closing agreement under a **Voluntary Compliance Program**.
- E. **“Employee Benefits”** means any **Plan**, and any workers’ compensation insurance, unemployment insurance, Social Security or disability benefits for employees of the **Company**.
- F. **“Insured”** means the **Insured Persons**, the **Plan** and the **Sponsor Organization**.
- G. **“Insured Person”** means any director, officer, trustee, partner or employee of the **Plan** or of the **Sponsor Organization** while acting in his or her capacity as a fiduciary of the **Plan**.
- H. **“Loss,”** as defined in GENERAL DEFINITIONS I., will not include:
1. fines, penalties or taxes imposed by law, except that **Loss** may include 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; or
  2. benefits due or to become due under the terms of any **Plan**, unless and then only to the extent that recovery for such benefits is based on a **Wrongful Act** and is payable as the adjudicated personal obligation of an **Insured** who is a natural person; provided that **Loss** shall include **Defense Expenses** with respect to any **Claim** seeking benefits due or to become due under the terms of any **Plan**.
- I. **“Pension Benefit Plan”** means any employee pension benefit plan, as such term is defined in ERISA.
- J. **“Plan”** means:
1. any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, created before the Inception Date set forth in ITEM 2. of the Declarations by any **Sponsor Organization**, or by any interest owned or controlled by such **Sponsor Organization**, for the employees thereof;
  2. any **Welfare Benefit Plan** which was, is now, or becomes sponsored by any **Sponsor Organization**;
  3. 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 **Insured** provides the Insurer with written notice of the creation of such **Pension Benefit Plan** within ninety (90) days of the effective date of such **Pension Benefit Plan**; and
  4. 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 **Insured** provides the Insurer such additional information with respect thereto as the Insurer may reasonably require;
    - b. the **Insured** provides the Insurer written notice of such acquisition as soon as practicable after the effective date thereof; and
    - c. the Insurer specifically agrees by written endorsement to provide coverage with respect to such **Plan** and the **Insured** has accepted any additional terms, conditions and limitations of coverage, and agrees to pay any additional premium that the Insurer in its sole discretion, shall deem appropriate.

**Plan** shall not include any multi-employer plan or Employee Stock Ownership Plan.

- K. **“Sponsor Organization”** means the **Company** while acting in its capacity as a sponsor of a **Plan** for the benefit of its employees.
- L. **“Voluntary Compliance Program”** means:

1. the Tax Sheltered Annuity Voluntary Correction Program, as described in IRS Rev. Proc. 95-24, as the same may be amended from time to time; and
2. the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program and the Administrative Policy regarding Self-Correction, as consolidated in the Employee Plans Compliance Resolution System described in IRS Rev. Proc. 98-22, as the same may be amended from time to time.

M. "**Welfare Benefit Plan**" means any employee welfare benefit plan, as such term is defined in ERISA.

N. "**Wrongful Act**" means any actual or alleged:

1. breach of the duties, responsibilities or obligations imposed upon fiduciaries of any **Plan** by ERISA or the common law or statutory law of any jurisdiction governing such **Plan**;
2. negligent act, error or omission by an **Insured** in the **Administration of Employee Benefits**; or
3. any other matter claimed against an **Insured** solely by reason of their service as a fiduciary of any **Plan**.
4. breach of the responsibilities, obligations or duties imposed upon fiduciaries of the **Sponsor Organization** by the Health Insurance Portability and Accountability Act of 1996 and any rules or regulations promulgated thereunder ("HIPAA") with respect to any **Plan**;
5. other violation of HIPAA claimed against an **Insured** due solely to such **Insured's** services as a fiduciary of any **Plan**; or
6. negligent violation of HIPAA by an **Insured** in the **Administration** of any **Plan**.

### III. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss** or **Compliance Costs**, and shall have no duty to defend or pay **Defense Expenses**, in connection with any **Claim** or **Compliance Request** made against an **Insured**:

- A. for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;
- B. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants contaminants or waste of any kind including but not limited to nuclear material or nuclear waste;
- C. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which was brought prior to the Pending And Prior Proceeding Date set forth in ITEM 7. (c) of the Declarations;
- D. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any pension and welfare benefit plan fiduciary liability insurance policy or similar insurance policy;
- E. brought about or contributed to in fact by any:
  1. intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or

2. profit or remuneration gained by any **Insured** to which such is not legally entitled;

as determined by a final adjudication in the underlying action or in a separate action or proceeding. Each **Insured** agrees that, if the Insurer has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION E., such **Insured** will repay the Insurer upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**;

- F. arising out of any actual or alleged liability of the **Company** under any express contract or agreement, other than an Agreement and Declaration of Trust or similar agreement creating or establishing a **Plan**. With respect to this EXCLUSION F., an "express contract or agreement" is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language. This EXCLUSION F. will not apply to the extent that an **Insured** would have been liable in the absence of the express contract or agreement;
- G. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged failure by any **Insured** to comply with any workers' compensation, unemployment insurance, Social Security or disability benefits law or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world, except:
  1. the Consolidated Omnibus Budget Reconciliation Act of 1985 and any amendments thereto or any rules or regulations promulgated thereunder; or
  2. HIPAA;
- H. 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**; provided this EXCLUSION H. shall not apply to the Insurer's obligations, subject to the applicable Limit of Liability, to defend such **Claim** and to pay **Defense Expenses** resulting therefrom;
- 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; or
- J. based upon, arising out of, directly or indirectly resulting from any discrimination, retaliation or wrongful termination of employment; provided that this EXCLUSION J. will not apply to **Claims** asserted under Section 510 of ERISA.

No conduct of any **Insured** will be imputed to any other **Insured** to determine the application of any of the above EXCLUSIONS.

#### IV. RECOURSE

It is agreed that, in the event an **Insured** breaches a fiduciary obligation under ERISA, the Insurer has the right of recourse against any such **Insured** for any amount paid by the Insurer as a result of such breach of fiduciary duty, but the Insurer shall have no such right of recourse if the Policy has been purchased by the fiduciary or by an employer or an employee organization.