

**NAVIGATORS SPECIALTY INSURANCE COMPANY**

**PRIMARY LAWYERS**

**PROFESSIONAL LIABILITY INSURANCE**

## **LAWYERS PROFESSIONAL LIABILITY INSURANCE**

**NOTICE:** This is a claims made and reported form. Except to such extent as may otherwise be provided herein, the coverage afforded under this insurance policy is limited to liability for only those Claims that are first made against the Insured and reported to the Company while the insurance is in force. The Limit of Liability available to pay Damages shall be reduced and may be completely exhausted by payment of Claims Expenses. Damages and Claims Expenses shall be applied against the deductible. Please review the coverage afforded under this insurance policy carefully and discuss the coverage hereunder with your insurance agent or broker.

### **I Insuring Agreements**

Navigators Specialty Insurance Company (hereinafter the "Company") agrees with the Insured, named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the application which is made a part of this insurance policy (hereinafter "policy" or "insurance") and subject to the Limit of Liability, exclusions, conditions and other terms of this insurance:

#### **A Coverage**

To pay on behalf of the Insured Damages and Claims Expenses which the Insured shall become legally obligated to pay because of any Claim or Claims, including Claim(s) for Personal Injury as hereafter defined, first made against the Insured and reported to the Company during the Period of Insurance or Extended Reporting Period, arising out of any act, error or omission of the Insured in rendering or failing to render Professional Services for others on behalf of the Named Insured designated in Item 1 of the Declarations and caused by the Insured, except as excluded or limited by the terms, conditions and exclusions of this policy.

#### **B Defense and Settlement (Included in the Limit of Liability)**

- 1 The Company shall have the right and duty to defend, subject to the Limit of Liability, any Claim against the Insured seeking Damages which are payable under the terms of this insurance, even if any of the allegations of the Claim are groundless, false or fraudulent.
- 2 It is agreed that the Limit of Liability available to pay Damages shall be reduced and may be completely exhausted by payment of Claims Expenses. Damages and Claims Expenses shall be applied against the deductible.

- 3 The Company shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the application and statements made in the application and with respect to coverage.
- 4 If the Insured shall refuse to consent to any settlement or compromise recommended by the Company and acceptable to the claimant and elects to contest the Claim, the Company's liability for any Damages and Claims Expenses shall not exceed the amount for which the Claim could have been settled, less the remaining deductible, plus the Claims Expenses incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Company shall have the right to withdraw from the further defense thereof by tendering control of said defense to the Insured.
- 5 It is further provided that the Company shall not be obligated to pay any Damages or Claims Expenses, or to undertake or continue defense of any suit or proceeding after the applicable limit of the Company's liability has been exhausted by payment of Damages or Claims Expenses or after deposit of the applicable policy limit in a court of competent jurisdiction, and that upon such payment, the Company shall have the right to withdraw from the further defense thereof by tendering control of said defense to the Insured.

## **II Definition of Insured**

Each of the following is an Insured under this insurance to the extent set forth below:

- (a) if the Named Insured designated in Item 1 of the Declarations is an individual, the person so designated but only with respect to the conduct of a law practice of which the individual is the sole proprietor;
- (b) if the Named Insured designated in Item 1 of the Declarations is a partnership, the partnership so designated.
- (c) any lawyers who are partners in the Named Insured including any incorporated partners and their shareholders but solely for acts on behalf of the Named Insured designated in Item 1 of the Declarations;
- (d) if the Named Insured designated in Item 1 of the Declarations is a Professional Corporation or Professional Association, the Professional Corporation or Professional Association so designated.
- (e) any lawyers who are stockholders or members of a Professional Corporation or Professional Association but solely for acts on behalf of such Named

Insured;

- (f) any lawyer acting as "of counsel", but solely for acts on behalf of the Named Insured designated in Item 1 of the Declarations;
- (g) any employed lawyer, paralegal, other employee or independent contractor but solely for acts on behalf of the Named Insured designated in Item 1 of the Declarations;
- (h) any person who previously qualified as an Insured under (c), (e), (f) or (g) above prior to the termination of the required relationship with Named Insured, but solely for acts on behalf of the Named Insured designated in Item 1 of the Declarations;
- (i) any partnership, Professional Corporation or Professional Association, advised in writing to the Company, of which the Named Insured is the successor;
- (j) any lawyer who during the Period of Insurance becomes a partner, member, stockholder or employee of the Named Insured but solely for acts on behalf of the Named Insured designated in Item 1 of the Declarations;
- (k) the estate, heirs, executors, administrators, assigns and legal representatives of any Insured in the event of such Insured's death, incapacity, insolvency or bankruptcy, but only to the extent that such Insured would otherwise be provided coverage under this insurance.

### **III Territory**

This insurance applies to acts, errors or omissions which take place anywhere in the world regardless of where the claim or service of suit is brought, during the Period of Insurance or Extended Reporting Period when purchased in accordance with Clause IX.

### **IV Exclusions**

The coverage under this insurance does not apply to Damages or Claims Expenses incurred with respect:

- (a) to any Claim arising out of any criminal, dishonest, fraudulent or malicious act, error or omission of any Insured, committed with actual, criminal, dishonest, fraudulent or malicious purpose or intent. However, notwithstanding the foregoing, the insurance afforded by this policy shall apply to Claims Expenses incurred in defending any such Claim or

circumstance which might lead to a Claim, but shall not apply to any Damages which the Insured might become legally obligated to pay;

- (b) to any Claim by one Insured under this insurance against another Insured under this insurance unless it arises out of an act, error or omission committed or alleged to have been committed by such Insured in rendering or failing to render professional services;
- (c) to any Claim arising out of bodily injury to, or sickness, disease or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof;
- (d) to any loss sustained by an Insured as a beneficiary or distributee of any trust or estate;
- (e) to any Claim arising out of any Insured's activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the Named Insured;
- (f) to any Claim made by or against or in connection with any business enterprise (including the ownership, maintenance or care of any property in connection therewith), not named in Item 1 of the Declarations, of which any insured has an ownership interest of more than 10%, or which is directly or indirectly controlled, operated or managed by any Insured.
- (g) to any Claim or circumstance which might lead to a Claim in respect of which any Insured has given notice to the insurer of any other policy in force previous to the effective date of this policy;
- (h) to any Claim arising out of any acts, errors, or omissions which took place prior to the inception date of the first policy issued and continuously renewed, if any Insured on the effective date knew or could have reasonably foreseen that such acts, errors or omissions might be expected to be the basis of a Claim;
- (i) to any Claim arising out of any Insured's capacity as an elected public official or as an employee of a governmental body, subdivision, or agency thereof unless the Insured is deemed an employee solely by virtue of rendering legal services to such governmental body, the remuneration for which services inures to the benefit of the Named Insured;
- (j) to any Claim arising out of any Insured's activities and/or capacity as a Fiduciary under the Employee Retirement Income Security Act of 1974 and its amendment or any regulation or order issued pursuant thereto, except if the Insured is deemed to be a Fiduciary solely by reason of legal advice rendered with respect to any employee benefit plan;

- (k) to any Claim directly or indirectly brought about by, arising out of, or attributable to any actual or alleged violation of the Racketeer Influenced and Corrupt Organization Act, 18 USC Sections 1961 et seq., or any comparable state law, and any amendments thereto, or any rules or regulations promulgated there under. Notwithstanding the foregoing, the insurance afforded by this policy shall apply to Claims Expenses incurred in defending any such Claim, but shall not apply to any punitive or exemplary damages, fines, penalties sanctions, or any damages which are a multiple of compensatory damages that the Insured might become legally obligated to pay;
- (l) to any Claim based upon or arising out of, directly or indirectly, in whole or in part, any investment or tax opinion, advice or analysis or the performance or failure to perform any Professional Services in relation to any offering, syndication, partnership, tax shelter, tax haven, or tax avoidance arrangement, organization or device.

If a retroactive date is applicable to this coverage it will appear at Item 2 of the Declarations and the following exclusion shall apply:

- (m) to any Claim or circumstance that might lead to a Claim arising out of any act, error or omission which took place, or is alleged to have taken place, prior to the retroactive date as set forth in Item 2 of the Declarations.

## V. **Conditions**

Definitions: Whenever used in this policy:

A "Personal Injury" means:

- (1) false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or malicious prosecution;
- (2) libel or slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy.

B "Professional Services" means:

Professional services provided as a lawyer, notary public, title agent, trustee, arbitrator, mediator, lobbyist, or Fiduciary.

C "Claims Expenses" means:

- (1) necessary and reasonable fees charged by an attorney designated by the Company and consented to by the Named Insured, with such consent not to be unreasonably withheld; and
  - (2) all other necessary and reasonable fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim, suit or proceeding arising in connection therewith, if incurred by the Company, or by the Insured with the written consent of the Company.
  - (3) Claims Expenses does not include any salary, overhead or other charges by the Insured except as outlined under section VI. D, "Supplemental Payments" for any time spent in cooperating in the defense and investigation of any Claim or circumstance which might lead to a Claim notified under this insurance.
- D "Period of Insurance" means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this insurance and specifically excludes any Extended Reporting Period hereunder.
- E "Extended Reporting Period", if applicable, means the time after the end of the Period of Insurance for reporting Claims arising out of acts, errors or omissions which take place prior to the end of the Period of Insurance and otherwise covered by this insurance.
- F "Claim" means a demand received by any Insured for money or services including the service of suit or institution of arbitration proceedings against the Insured.
- G "Fiduciary" except as set forth in Clause IV(k), means an Insured's capacity as an administrator, conservator, executor, guardian, trustee, receiver, escrow agent or any similar capacity.
- H "Damages" means a monetary judgment, award or settlement, including any such judgment or settlement for personal injury, but does not include fines or statutory penalties, sanctions whether imposed by law or otherwise, any other amount awarded in any disciplinary proceeding, the return of or restitution of legal fees, costs and expenses, punitive or exemplary damages, the multiplied portion of multiplied damages, amounts for which the Insured is not financially liable or which are without legal recourse to the Insured or matters which may be deemed uninsurable under the law.

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

## VI **Limit of Liability**

- A The Limit of Liability stated in the Declarations as "each and every claim" is the limit of the Company's liability for all Damages and Claims Expenses arising out of the same, related or continuing professional services without regard to the number of Insureds, Claims or claimants.
- B The Limit of Liability stated in the Declarations as "aggregate" is the total limit of the Company's liability for all Damages and Claims Expenses arising out of Claims or circumstances which might lead to a Claim first made and reported to the Company during the Period of Insurance or during the Extended Reporting Period and Claims arising out of the same, related or continuing professional services as such Claims or circumstances which might lead to a Claim.
- C The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability of the Company for the Period of Insurance.
- D **Supplementary Payments:** The Insurer will pay, in addition to the applicable Limit of Liability, all reasonable expenses incurred by the Named Insured at the Insurer's request to assist in the investigation or defense of a Claim, including actual loss of earnings because of time off from work. Such supplementary payments shall not exceed \$250 per day and in no event shall the amount payable hereunder exceed \$5,000 per Claim.

## VII **Deductible**

The deductible amount stated in the Declarations shall be satisfied by payments by the Insured of Damages and Claims Expenses resulting from each Claim first made and reported to the Company during the Period of Insurance and the Extended Reporting Period as a condition precedent to the payment by the Company of any amounts hereunder, and the Company shall be liable only for amounts in excess of such Deductible subject to the Company's total liability not exceeding the limit set forth in Item 4 of the Declarations. The Insured shall make direct payments within the deductible to appropriate other parties designated by the Company.

## VIII **Innocent Insured**

- A Whenever coverage under this insurance would be excluded, suspended or lost:



- (1) because of any exclusion relating to criminal, dishonest, fraudulent or malicious acts, errors or omissions by any 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
- (2) because of noncompliance with Clause XI Notice of Claim or Circumstance That May Lead to a Claim, with respect to which any other Insured shall be in default solely because of the failure to give such notice or concealment of such failure by one or more Insureds responsible for the loss or damage otherwise insured hereunder,

the Company agrees that such insurance as would otherwise be afforded under this policy shall cover and be paid with respect to those Insureds who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of (a) one or more of the acts, errors or omissions described in any such exclusion; or (b) such failure to give notice, provided that if the condition be one with which such Insured can comply, after receiving knowledge thereof, the Insured entitled to the benefit of Clause VIII shall comply with such condition promptly after obtaining knowledge of the failure of any other Insured to comply therewith.

- B With respect to this provision, the Company's obligation to pay in such event shall be in excess of the deductible and in excess of the full extent of any assets in the Named Insured of any Insured to whom the exclusion applies. In no event shall the Company's obligation to pay exceed the Limit of Liability stated in Item 4 of the Declarations.

## IX **Extended Reporting Endorsement**

- A In the event of cancellation or non-renewal of this insurance by the Company or by the Insured the Named Insured designated in Item 1 of the Declarations shall have the right, upon payment in full and not proportionally or otherwise in part of an appropriate additional premium within 30 days of such termination, to have issued an endorsement providing an **Extended Reporting Period** for all **Claims** first made against any **Insured** and reported to the Company after the termination of this insurance arising out of any act, error or omission occurring prior to the termination of the insurance and otherwise covered by this insurance.

The appropriate additional premium and corresponding Extended Reporting Period shall be:

- (1) 100% of the Named Insured's last annual premium for a 1 year Extended Reporting Period;
- (2) 150% of the Named Insured's last annual premium for a 2 year Extended Reporting Period;
- (3) 200% of the Named Insured's last annual premium for a 3 year Extended Reporting Period;
- (4) 250% of the Named Insured's last annual premium for a 5 year Extended Reporting Period.

B The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability of the Company for the Period of Insurance.

C The quotation by the Company of a different premium or deductible or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by the Company.

D The right to the Extended Reporting Period shall not be available to the Named Insured where cancellation or non-renewal by the Company is due to non-payment of premium or failure of an Insured to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable deductible.

E All notices and premium payments with respect to the Extended Reporting option shall be directed to the Company through your broker.

F At the commencement of the Extended Reporting Period the entire premium shall be deemed earned, and in the event the Named Insured terminates the Extended Reporting Period for any reason prior to its natural expiration, the Company will not be liable to return any premium paid for the Extended Reporting Period.

**X Other Insurance**

This insurance shall apply in excess of any other valid and collectible insurance available to any Insured, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this policy.

**XI Notice of Claim, or Circumstance That May Lead to a Claim**

A If any Claim is made against the Insured, the Insured shall immediately forward to the Company at Navigators Specialty Insurance Company, One Penn Plaza, 55<sup>th</sup> Floor, New York, NY 10119 (Attn: Navigators Pro Claim Department). Fax number: 212-613-4300. Notice shall include every

demand, notice, summons or other process received by him or his representative.

- B If during the Period of Insurance the Insured first becomes aware of any act, error or omission that could reasonably be the basis for a Claim it must give written notice to the Company during the Period of Insurance of:
- (1) the specific act, error or omission; and
  - (2) the injury or damage which may result or has resulted from the act, error or omission; and
  - (3) the circumstance by which the Insured first became aware of the act, error or omission.

Any subsequent Claim made against the Insured which is the subject of the written notice shall be deemed to have been made at the time written notice was first given to the Company.

- C A Claim shall be considered to be reported to the Company when notice is first given to the Company of the Claim or of an act, error or omission which could reasonably be expected to give rise to a Claim.
- D All Claims arising out of the same, continuing or related professional services shall be considered a single Claim and deemed to have been made at the time the first of the related Claims is reported to the Company and shall be subject to one Limit of Liability.
- E In the event of non-renewal of this insurance by the Company, the Insured shall have thirty (30) days from the expiration date of the Period of Insurance to notify the Company of a Claim made against the Insured during the Period of Insurance which arises out of any act, error or omission which took place prior to the termination date of the Period of Insurance and otherwise covered by this insurance.
- F If any Insured shall make any claim under this policy knowing such claim to be false or fraudulent, as regards amount or otherwise, this policy shall become null and void, and all coverage hereunder shall be forfeited.

## **XII Assistance and Cooperation of the Insured**

The Insured shall cooperate with the Company in all investigations, including investigations regarding the application and coverage under this insurance and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any Insured who may be liable to the

Insured because of acts, errors or omissions with respect to which insurance is afforded under this policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award or otherwise dispose of any Claim without the consent of the Company.

### **XIII 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 terms of this insurance, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment or award against the Insured after actual trial or arbitration 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, award or written agreement shall thereafter be entitled to make a Claim under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this insurance to join the Company as a party to an action or other proceeding against the Insured to determine the Insured's liability, nor shall the Company be impeded 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.

### **XIV Subrogation**

In the event of any payment under this insurance, the Company shall be subrogated to all the Insured's rights of recovery therefore 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 after the payment of Damages by the Company to prejudice such rights.

### **XV 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 insurance or estop the Company from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance, signed by the Company.

### **XVI Change in Membership of Firm**

Any additions to the list of lawyers in the application which take place during the

Period of Insurance must be immediately reported to the Company in the event that:

- 1) the total number of new lawyers brought into or added to the firm during the Period of Insurance increases the number of lawyers as stated in the application by 15% of the total number of lawyers listed in the application.
- 2) any lawyer brought into or added to the firm during the Period of Insurance had been or was in the process of being reprimanded or censured by any court or bar association or disbarred or prohibited from practicing in a specified area of law or before any court or administrative agency; or
- 3) prior to joining the firm, any Claim had been made against the lawyer or the lawyer had become aware of circumstances that might lead to a Claim.

The Company expressly reserves the right to demand a premium adjustment in the event that any additions to the list of lawyers in the application for this insurance meet the criteria set forth in the paragraphs immediately above.

#### **XVII Mergers and Acquisitions**

The Named Insured shall be required to give written notice to the Company prior to the completion of a merger or acquisition by or of the Named Insured, and the Company expressly reserves the right to demand a premium adjustment if this insurance is to remain in force subsequent to any merger or acquisition.

#### **XVIII Assignment**

The interest hereunder of any Insured is not assignable. If the Insured shall die or be adjudged incompetent, this insurance shall cover the Insured's legal representative as the Insured with respect to liability previously incurred and covered by this insurance.

#### **XIX Cancellation**

A This policy may be cancelled by the Named Insured by surrender thereof to the Company or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This insurance may be cancelled by the Company by mailing to the Named Insured at the address shown in the Declarations written notice stating when not less than 60 days thereafter such cancellation shall be effective. However, if the Company cancels this insurance because the Insured has failed to pay a premium when due this insurance may be cancelled by the Company by mailing a written notice of cancellation to the Named Insured at the address shown in the Declarations stating when not less than 10 days thereafter such

cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the Period of Insurance. Delivery (where permitted by law) of such written notice either by the Named Insured or by the Company shall be equivalent to mailing.

- B If the Named Insured cancels this insurance, earned premium shall be computed in accordance with the short rate table and procedure. If the Company cancels this insurance, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

## **XX Entire Contract**

By acceptance of this policy the Insured agrees that the statements in the Declarations and application are its agreements and representations, that this insurance is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company relating to this insurance.

## **XXI Service of Suit**

It is understood and agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America. The foregoing shall not constitute a waiver of the right of the Company to remove, remand, or transfer such suit to any other court of competent jurisdiction in accordance with the applicable statutes of the state of United States pertinent hereto. In any suit instituted against them upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

It is further agreed that service of process in such suit may be made upon the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose in the statute or his successor or successors in office as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance.

The Company hereby designates the President of Navigators Specialty Insurance Company, One Penn Plaza, 55<sup>th</sup> Floor, New York, NY 10119, as the person to who the said Superintendent, Commissioner, or Director of Insurance is authorized to mail such process or a true copy thereof, in compliance with the applicable statutes governing said service of process in the state or jurisdiction in which a cause of action under this contract of insurance arises.