

# EMPLOYEE BENEFITS LIABILITY COVERAGE FORM

THIS FORM PROVIDES CLAIMS MADE COVERAGE.

PLEASE READ THE ENTIRE FORM CAREFULLY.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION II--WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION VII--DEFINITIONS.

## SECTION I--EMPLOYEE BENEFITS LIABILITY COVERAGE

### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any negligent act, error, or omission of the insured, or of any other person for whose acts the insured is legally liable. The negligent act, error, or omission must be committed in the "administration" of your "employee benefit program." No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS. This insurance does not apply to any negligent act, error, or omission which occurred before the Retroactive Date, if any, shown in the Declarations or which occurs after the policy expires. The negligent act, error or omission must take place in the "coverage territory." We will have the right and duty to defend any "suit" seeking those damages. But:

- (1) The amount we will pay for damages is limited as described in SECTION III--LIMITS OF INSURANCE:
- (2) We may at our discretion, investigate any report of a negligent act, error or omission and settle any claim or "suit" that may result: and
- (3) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

b. This insurance applies to any negligent act, error or omission of the insured, but only if a claim for damages because of the negligent act, error or omission is first made against any insured during the policy period.

- (1) A claim by a person or organization seeking damages will be deemed to have been made when notice of such claim is received and recorded by any insured or by us, whichever comes first.
- (2) All claims for damages sustained by any one employee, including the employee's dependents and beneficiaries, will be deemed to have been made at the time the first of those claims is made against any insured.

### 2. Exclusions

This insurance does not apply to:

- a. Loss arising out of any dishonest, fraudulent, criminal or malicious act or omission, committed by any insured;
- b. "Bodily injury" or "property damage" or "personal injury";
- c. Loss arising out of failure of performance of contract by any insured;
- d. Loss arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program";
- e. Any claim or suit based upon:
  - (1) failure of any investment to perform as represented by any insured, or
  - (2) advice given to any person to participate or not to participate in any plan included in the "employee benefit program";
- f. Loss arising out of your failure to comply with the mandatory provisions of any law concerning workers' compensation, unemployment insurance, social security or disability benefits;
- g. Loss for which the insured is liable because of liability imposed on a fiduciary by the Employee Retirement Security Act of 1974, as now or hereafter amended; or
- h. Loss or damage for which benefits have accrued under the terms of an employee benefit plan to the extent that such benefits are available from funds accrued by the insured for such benefits or from collectible insurance, notwithstanding the insured's act, error or omission in administering the plan which precluded the claimant from receiving such benefits.

### 3. Supplementary Payments

We will pay, with respect to any claim or "suit" we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$100 a day because of time off from work.
- d. All costs taxed against the insured in the "suit."
- e. Pre-judgment interest awarded against the insured on that part of the judgment we pay. If we made an offer to pay the applicable limit of insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
- f. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

### SECTION II--WHO IS AN INSURED

- 1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured.
  - c. An organization other than a partnership or joint venture, you are an insured. Your directors and stockholders are also insureds, but only with respect to their liability as your directors or stockholders.
2. Each of the following is also an insured:
- a. Each of your partners, executive officers and employees who is authorized to administer your "employee benefit program."
  - b. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire, or form the organization or the end of the policy period, whichever is earlier:
  - b. Coverage under this provision does not apply to any negligent act, error or omission that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

### SECTION III--LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
  - b. Claims made or "suits" brought;
  - c. Persons or organizations making claims or bringing "suits."
  - d. Acts, errors or omissions which result in loss; or
  - e. Plans included in your "employee benefit program";
2. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions committed in the "administration" of your "employee benefit program."
3. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one employee, including the employee's dependents and beneficiaries, because of acts, errors or omissions committed in the "administration" of your "employee benefit program."

The limits of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### SECTION IV—DEDUCTIBLE

1. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in Item 6 of the Declarations as applicable to "Each Employee." The limits of insurance applicable to "Each Employee" will be reduced by the amount of this deductible. The Aggregate limit shall not be reduced by the application of such deductible amount.

2. The deductible amount stated in the Declarations applies to all damages sustained by an employee because of an act, error or omission covered by this insurance.

3. The terms of this insurance, including those with respect to:

a. Our right and duty to defend any "suits" seeking those damages; and

b. Your duties in the event of an act, error or omission claim, or suit apply irrespective of the application of the deductible amount.

4. We may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

#### SECTION V--EMPLOYEE BENEFITS LIABILITY CONDITIONS

1. Bankruptcy.

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In the Event Of Act, Error or Omission, Claim or Suit.

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. Notice should include:

(1) What the act, error or omission was and when it occurred.

(2) The names and addresses of any employees who may suffer damages as a result of the act, error or omission.

Notice of an act, error or omission is not notice of a claim.

b. If a claim is received by any insured you must:

(1) Immediately record the specifics of the claim and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or a "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of damage to which this insurance may also apply.

d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

### 3. Legal Action Against Us.

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance.

This insurance is primary except when paragraph 4. of Section VI--Extended Reporting Periods applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

#### b. Method of Sharing.

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### 5. Premium Audit.

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

### 6. Representations.

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation of Insureds.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against who claim is made or "suit" is brought.

8. Transfer of Rights of Recovery Against Others To Us.

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. Cancellation, Non-renewal, Renewal and Reduction or Deletion of Coverage:

The following conditions also apply to this Coverage Part:

All conditions relating to cancellation, non-renewal, renewal, and reduction or deletion of coverage which would apply to a Commercial General Liability Coverage Part attached to this policy.

SECTION VI--EXTENDED REPORTING PERIODS

1. We will provide an automatic Extended Reporting Period as described in paragraph 3. or, if you purchase it, an Extended Reporting Period Endorsement as described in paragraph 4, only if:

- a. This Coverage Part is cancelled or not renewed for any reason; or
- b. We renew or replace this Coverage Part with other insurance that has a Retroactive Date later than the one shown in this Coverage Part's Declarations.

2. If we provide an Extended Reporting Period, the following is added to paragraph 1.b. of INSURING AGREEMENT--SECTION I:

(3) A claim first made during the Extended Reporting Period will be deemed to have been made on the last day of the policy period provided that the claim is for damages because of an act, error or omission that occurred before the end of the policy period of this policy (but not before any applicable Retroactive Date).

The Extended Reporting Period will not reinstate or increase the Limits of Insurance or extend the policy period.

3. The automatic Extended Reporting Period will be for 60 days, starting with the end of the policy period of this policy.

This automatic Extended Reporting Period applies only if no subsequent insurance you purchase applies to the claim, or would apply but for the exhaustion of its applicable limit of insurance.

This automatic Extended Reporting Period may not be cancelled.

4. If you purchase the optional Extended Reporting Period Endorsement, the Extended Reporting Period will be for one year, starting with the end of the policy period of this policy. We will issue that Endorsement if the first Named Insured shown in the Declarations:

- a. Makes a written request for it which we receive within 60 days after the end of the policy period; and
- b. Promptly pays the additional premium when due.

The Extended Reporting Period Endorsement will not take effect unless the additional premium is paid when due. If that premium is paid when due, the endorsement may not be canceled.

The Extended Reporting Period Endorsement will also amend paragraph 4.a. of SECTION V—EMPLOYEE BENEFITS LIABILITY CONDITIONS (Other Insurance) so that the insurance provided will be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, whose policy period begins or continues after the Endorsement takes effect.

5. We will determine the actual premium for the Extended Reporting Period Endorsement in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this Coverage Part for future payment of damages; and
- d. Other related factors.

The premium for the Extended Reporting Period Endorsement will not exceed 200% of the annual premium for the Coverage Part to which the endorsement would be attached and will be fully earned when the Endorsement takes effect.

#### SECTION VII--DEFINITIONS

1. "Administration" means:

- a. Counseling employees, including their de- pendants and beneficiaries, with respect to the "employee benefit program";
- b. Handling records in connection with the "employee benefit program"; or
- c. Effecting or terminating any employee's participation in a plan included in the "employee benefit program."

2. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

3. "Coverage territory" means the United States of America (including its territories and possessions), Puerto Rico and Canada.

4. "Employee" means your officers, partners and employees whether actively employed, disabled or retired.

5. "Employee benefit program" means the following plans:

a. Group life insurance, group accident or health insurance, "profit sharing plans," pension plans and "stock subscription plans," provided that no one other than an employee may subscribe to such insurance or plans;

b. Unemployment insurance, social security benefits, workers' compensation and disability benefits;

c. Any other similar plan designated in the Declaration or added thereto by endorsement.

6. "Personal injury" means injury other than "bodily injury," arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. Wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or

e. Oral or written publication of material that violates a person's right of privacy.

7. "Profit sharing plans" mean only such plans that are equally available to all full time employees.

8. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property; or

b. Loss of use of tangible property that is not physically injured.

9. "Stock subscription plans" mean only such plans that are equally available to all full time employees.

10. "Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes an arbitration proceeding alleging such damages to which you must submit or submit with our consent.