

Professional Protection - Errors & Omissions Knowledge Economy

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Professional Protection- Errors & Omissions Knowledge Economy

CONTRACT

THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO US IN ACCORDANCE WITH THE REPORTING REQUIREMENTS OF THIS POLICY. DEFENSE COSTS ARE INCLUSIVE OF THE LIMITS OF LIABILITY UNLESS OTHERWISE NOTED.

Throughout this policy the words “you” and “your” refer to the “named insured” shown in the Declarations and any other person qualifying as an “insured” under this policy. The words “we”, “us” and “our” refer to the Company providing this insurance.

In consideration of the payment of the premium and subject to the statements in the Declarations and in the Application submitted to us for this policy together with any written materials attached thereto and submitted to us, and subject to the Limit of Insurance, exclusions, conditions and other terms of this policy, the parties agree as follows:

COVERAGE

INSURING AGREEMENT: PROFESSIONAL LIABILITY COVERAGE

We will pay “defense costs” and those sums that you become legally obligated to pay as “damages” as a result of a “claim” alleging a “wrongful act” to which this policy applies.

This insurance applies to “wrongful acts” that occur or allegedly occur before the expiration of the “policy period” and after the “retroactive date” shown on the Declarations, but only if the “claim” is first made against you and reported to us during the “policy period” or “extended reporting period”, if applicable.

No other obligation or liability to pay any sums or perform any acts or services is covered by this policy unless explicitly provided for under the Coverage Extensions set forth below, and then only to the extent provided therein and pursuant to this policy.

COVERAGE EXTENSIONS

Payments made under these Coverage Extensions are in addition to and do not reduce the Limits of Insurance shown in the Declarations and furthermore are not subject to the deductible.

A. Disciplinary Proceeding Reimbursement

We will retain counsel and pay on your behalf reasonable and necessary costs, expenses and fees incurred to engage such counsel to represent you in connection with the investigation or defense of any action or proceeding initiated against you by any entity responsible for regulating the profession of the “named insured” shown in the Declarations; provided that such action or proceeding arises from an “wrongful act” for which coverage is provided in the Insuring Agreement above and notice of any such action or proceeding is first received by you and reported to us during the “policy period”.

The maximum amount payable under this Coverage Extension is \$15,000 per action or proceeding.



B. Wage Loss/Deposition Expense Coverage

We will reimburse you for actual lost wages and reasonable and necessary costs and expenses incurred by you if you are requested by us to attend any deposition(s), trial(s), hearing(s), or arbitration proceedings(s) relative to the defense of a covered “claim”.

This Coverage Extension does not apply to any deposition where you are acting as a paid expert.

The maximum amount payable under this Coverage Extension is \$1,000 per day.

C. Estates, Heirs, Legal Representatives, Spouses and Domestic Partners

In the event of the death or disability of the “named insured”, we will pay “defense costs” and “damages” resulting from “claims” arising out of a “wrongful act” by the “named insured” to which this policy applies, which are brought against the heirs, executors, administrators, trustees in bankruptcy, assignees or legal representatives of such “named insured” or the legal spouse or legal domestic partner of such “named insured”. All terms and conditions of this policy shall apply with respect to the coverage provided to such person or organization.

D. Contingent Bodily Injury or Property Damage Claim

We will pay those sums that you become legally obligated to pay as “damages” as a result of a “claim” alleging “contingent bodily injury or property damage” to which this policy applies.

Subject to Paragraphs C.1. and C.2. of the LIMITS OF INSURANCE section, the maximum amount payable under this Coverage Extension is the sublimit of liability listed on the Declarations page, which is the most we will pay regardless of the number of:

1. “Insureds”;
2. “Claims”; or
3. Persons or organizations making “claims”.

This coverage extension only applies where the “insured” has no other insurance applicable to the “claim”. This sublimit of liability is part of, and not in addition to, the LIMITS OF INSURANCE shown on the Declarations page.

DEFENSE AND SETTLEMENT

- A.** We shall have the right and duty to defend any “claim” against you that seeks “damages” covered by this policy, even if the “claim” is groundless, false or fraudulent; however we will not be obligated to pay any “claim” or judgment or continue to defend a “claim” after the applicable Limit of Insurance has been exhausted by payment of “damages” to which this insurance applies.
- B.** When we assume the defense of any “claim” we will select and assign defense counsel and pay covered “defense costs”.
- C.** We may negotiate and settle any “claim” as we deem expedient; however, we will not commit to any settlement without the written consent of the “named insured”. If the “named insured” refuses to consent to any settlement acceptable to the claimant that we recommend, then, subject to the Limits of Insurance shown in the Declarations, our liability for such “claim” will not exceed the amount for which such “claim” could have been settled plus “defense costs” up to the date the “named insured” refused to settle such “claim”.
- D.** We shall have the right but not the duty to appeal any judgment.

LIMITS OF INSURANCE

- A.** The Limits of Insurance shown in the Declarations is the most we will pay for all “damages” under this policy regardless of the number of “claims” made.



- B. More than one “claim” involving the same “wrongful act” or “related wrongful act” shall be considered a single “claim” regardless of the number of “claims”, claimants or “insureds” and subject to one Limit of Insurance. All such “claims” constituting a single “claim” shall be deemed to have been first made on the earlier of the following dates: (1) the earliest date on which any such “claim” was first made; or (2) the earliest date on which any such “wrongful act” or “related wrongful act” was reported under this policy or any other policy providing similar coverage, regardless of whether such date is before or during the “policy period”. In no event shall a single law suit or proceeding constitute more than one “claim”.
- C. Subject to Paragraphs A. and B. above:
 - 1. Subject to Paragraph C.2., the Each Claim Limit shown in the Declarations is the most we will pay for all “damages” arising out of any one “claim”.
 - 2. The Aggregate Limit shown in the Declarations is the most we will pay for the sum of all “damages” under this policy.
- D. “Defense costs” shall be within and shall erode the Limits of Insurance shown in the Declarations.

DEDUCTIBLE

- A. Our obligations under this policy to pay “damages” on your behalf apply only to the amount of “damages” in excess of the deductible amount stated on the Declarations page of this policy.
- B. You shall promptly reimburse us for any “defense costs” paid by us within the deductible amount. Reimbursement of such “defense costs” shall apply towards and reduce the corresponding deductible amount.
- C. We may pay any part or all of a deductible amount to effect settlement of any “claim”, and upon notification of the action taken, you shall reimburse us for such part of the deductible amount as has been paid by us.

EXCLUSIONS

This policy does not apply to any “claim” based upon or in any way arising out of any actual or alleged:

- A. **Abuse or Sexual Misconduct**
Physical abuse, physical assault, physical molestation, mental abuse, battery, sexual assault, sexual abuse, sexual molestation, sexual harassment, or sexual misconduct.
- B. **Anti-Trust / Unfair Competition / RICO**
 - 1. Unfair competition, false, deceptive or unfair trade practices, or violation of any consumer protection laws;
 - 2. Antitrust violation, restraint of trade, or violation of the Sherman Anti-Trust Act, the Clayton Act, or Robinson-Patman Act, as amended or rules or regulations promulgated under or in connection with the foregoing acts or any similar federal, state, local or foreign laws or statutes; and/or Violation of the Organized Crime Control Act of 1970 (Racketeer Influenced and Corrupt Organizations Act, also known as RICO).
- C. **Bodily Injury, Property Damage and Personal and Advertising Injury**
“Bodily injury”, “property damage” or “personal and advertising injury”. However, this exclusion does not apply to “contingent bodily injury or property damage”.
- D. **Conduct**
Dishonest, fraudulent, criminal, malicious or intentional act committed by or at the direction of any “insured”, including, but not limited to, the willful or reckless violation of any statute, regulation, or other law. However, we will retain counsel to represent you and pay on your behalf “defense costs” for non-criminal “claims” brought against you during the “policy period” alleging such act unless or until it



has been determined by judgment, final ruling or admission adverse to you in any judicial proceeding, administrative or alternative dispute resolution proceeding that such act was committed. Such defense will not waive any of our rights under this policy. We shall not be required to appeal any such adjudication, judgment or ruling.

E. Confidential or Personal Information Disclosure and Electronic Data Exclusion

1. Unauthorized or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in any form, including “electronic data”. This includes, but is not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information;
2. Violation of any statute, regulation, common-law, or any other law regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of “electronic data”; or
3. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate “electronic data”.

This exclusion applies to, among other things, damages or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss, cost or expense, whether incurred by you or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to this exclusion.

F. Contractual Liability

1. Liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. Liability of others you assume under any oral or written contract or agreement.

However, this exclusion shall not apply to: (i) your liability that exists in the absence of such contract or agreement or (ii) any “claim” against you by your client or customer, if and to the extent that the “claim” alleges a breach of contractual obligations in the rendering of or failure to render “professional services”.

G. Conversion of Funds

Conversion, commingling, defalcation, misappropriation or improper use of funds or other property; or, the gaining of any personal profit or advantage to which an insured is not legally entitled.

H. Employment Matters

Employment obligations, decisions, practices or policies as an employer, including but not limited to, any “claim” under any worker’s compensation, unemployment compensation, employee benefits, or disability benefits law or similar law.

I. Infringement of Intellectual Property Rights

Infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

J. Licensing or Other Professional Designations

Liability resulting from “professional services” you provide:

1. While your license, credentials, certification or authorization to provide “professional services” is suspended, revoked or no longer valid to the extent that such is required by applicable state, federal or local law, rule or regulation; or
2. Before you have obtained the required license, credentials, certification or authorization to the extent such is required by applicable state, federal or local law, rule or regulation.



K. Pollution

1. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" anywhere at any time;
2. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
3. Any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of "pollutants".

L. Prior Wrongful acts, Acts, or Injuries

"Wrongful act", "contingent bodily injury or property damage" or any other act, error or omission that occurred before the "retroactive date".

M. Related Entities

"Claim" brought or maintained by or on behalf of:

1. Any "insured", or any associated entity of an "insured";
2. Any person who, at the time of the "wrongful act" giving rise to the "claim", is a family member;
3. Any entity operated or controlled by any "insured", or any employee, partner or trustee of any "insured"; or
4. Any person or entity in which any "insured" has a direct or indirect financial interest or is advised or induced by the "insured" to invest in or lend money to any person, firm, company or entity referred to above or to the "insured".

However, this exclusion does not apply to the extent of any coverage provided pursuant to the terms of **Coverage Extension C**.

N. Return of Fees

Return or withdrawal of any fees or charges.

O. Violation of Communication or Information Law

Violation of any statute, regulation, ordinance or common-law that prohibits or limits the collection, recording, disclosure, transmission, communication, distribution, or failure to protect material or information in any form.

OTHER INSURANCE

All amounts payable under this policy will be specifically excess of, and will not contribute with, any other valid and collectible professional liability insurance, including your employer provided professional liability insurance; and any other valid and collectible liability insurance; or any self-insured retention, fund or trust established by your employer for the purposes of paying losses or damages. Notwithstanding the foregoing, solely with respect to the defense of a "claim" this policy shall be primary and will not seek contribution from any other liability insurance available to an "insured" under this policy.

CONDITIONS

A. Assistance and Cooperation

You shall cooperate with us and provide us all information which we reasonably request including but not limited to attending hearings, depositions, and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any "claim" covered by this policy. You shall do nothing that may prejudice our position.



No “insured” will, except at that “insured’s” own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than first aid, without our consent.

B. Automatic Renewal

We shall offer automatic renewal of this policy unless:

- a. Either party has cancelled this policy for any reason permitted herein or by law;
- b. A material change in your profession, “professional services” or “business entity’s” operation as shown on the Declaration page has occurred; or
- c. You have notified us of a “claim” under this policy.

To the extent applicable, sixty (60) days in advance of the expiration of the “policy period” we will provide the “named insured” notification of an offer of automatic renewal of this policy. Any automatic renewal will be at the same terms and conditions as this policy (except for the inception and expiration dates of the “policy period” and at our sole and absolute discretion, the premium charged for the renewal policy) for a term of one year.

C. Cancellation and Non-renewal

1. Cancellation

- a. The “named insured” may cancel this policy. Such notice must indicate when the cancellation is to take effect.
- b. We may cancel this policy. If we cancel because of non-payment of premium, we must notify the “named insured” at least ten (10) days before the effective date of cancellation when the cancellation is to take effect. If we cancel for any other reason, we must notify the “named insured” at least sixty (60) days before the effective date of cancellation when the cancellation is to take effect.
- c. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if we have not made or offered any refund of unearned premium.

2. Non-renewal

If we decide not to renew this policy, we will notify the “named insured” of the nonrenewal not less than sixty (60) days before the expiration date of this policy.

D. Changes

This policy can be changed only by a written endorsement that we make to this policy.

E. Concealment, Misrepresentation, Fraud

This policy is void in any case of fraud by you relating to it. It is also void if you intentionally conceal or misrepresent a material fact or circumstance concerning this policy.

F. Conformance to Statute

The terms of this policy which are in conflict with the statutes, laws, ordinances or regulations in any country, jurisdiction, state or province where this policy is issued are amended to conform to the minimum requirements of such statutes, laws, ordinances or regulations.

G. Coverage Territory

This policy applies to “claims” brought against you in the United States of America, including its territories or possessions.

H. Extended Reporting Periods

We will provide one or more Extended Reporting Periods as detailed below, if this policy is cancelled or not renewed for any reason other than non-payment of premium.



Any Extended Reporting Period does not extend the “policy period” shown in the Declarations or change the scope of coverage provided. Coverage for a “claim” deemed first made during the Extended Reporting Period shall only apply with respect to any “wrongful acts” that occur or allegedly occur before the expiration of the “policy period” or the date of the policy termination, whichever is earlier and after the “retroactive date” shown on the Declarations and not previously reported to us. Once in effect, an Extended Reporting Period may not be cancelled. Extended Reporting Periods do not apply to “claims” that are covered under any subsequent insurance you purchase or would be covered but for exhaustion of the limit of insurance applicable to such “claims”. All “claims” under Extended Reporting Periods must be reported to us as detailed in the **Conditions** section of the policy and are deemed reported on the expiration date of the policy.

1. Automatic Extended Reporting Period

- a. An Automatic Extended Reporting Period is provided at no charge for sixty (60) days after the expiration of the “policy period” or the date of the policy termination, whichever is earlier.
- b. The Automatic Extended Reporting Period does not reinstate or increase the Limit of Insurance.

2. Optional Extended Reporting Period

If we or you cancel or non-renew this policy for reasons other than non-payment of premium, you shall have the right to purchase an Optional Extended Reporting Endorsement for a duration of up to seventy-two (72) months. You must apply for this extension prior to the sixty (60) days expiration of the Automatic Extended Reporting Period under item (1) above.

I. Knowledge of Wrongful act, Occurrence, or Circumstance

This policy applies to a “claim” only if prior to the inception date of the policy no “insured” had any knowledge of any “wrongful act”, occurrence or circumstance that a reasonable person might expect would result in such “claim”.

J. Legal Actions Against Us

No person or entity has a right under this policy:

1. To join us as a party or otherwise bring us into a suit asking for “damages” from you; or
 2. To sue us under this policy;
- unless all of its terms have been fully complied with.

A person or entity may sue us to recover on an agreed settlement (which is a settlement and release of liability signed by us, you and the claimant or the claimant's legal representative) or on a final judgment against you; but we will not be liable for “damages” that are not payable under this policy or that are in excess of the applicable Limits of Insurance of this policy.

K. Notice of a Claim

You shall, as a condition precedent to your rights under this policy with respect to a “claim”, notify us as soon as practicable after you first learn of such “claim”. In addition, you must promptly send us copies of any demands, notices, summons or legal papers received in connection with the “claim”; authorize us to obtain records and other information; cooperate with us in the investigation or settlement of or defense against the “claim”; and assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of “bodily injury” or “damage” to which this insurance may apply. To the extent possible, notice should include: how, when and where the “wrongful act”, occurrence or circumstance took place; and the nature and location of any “bodily injury” or “damage” arising out of any “wrongful act”, occurrence or circumstance.

L. Representations



By accepting this policy, you agree that the statements in the Declarations and Application and any written materials attached thereto are accurate and complete; those statements are based upon representations you made to us; and we have issued this policy in reliance upon your representations.

M. Subrogation and Transfer of Rights of Recovery

If we make any payment under this policy, we shall be subrogated to all of your rights against any person or entity, including the right to participate with you in the exercise of all of your rights of recovery. You shall deliver instruments and papers to us and do whatever else is necessary to secure such rights.

N. Transfer of Your Rights and Duties

Your rights and duties under this policy may not be transferred without our written consent. If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative.

O. Unintentional Failure to Disclose

Your failure to disclose all hazards existing as of the inception date of the policy will not prejudice you with respect to the coverage afforded by this policy, provided that any such failure or omission is not intentional.

P. Violation of Economic or Trade Sanctions

If any coverage provided under this policy would be in violation of any applicable economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then that coverage shall be null and void.

DEFINITIONS

A. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, mental anguish, mental injury, shock or humiliation resulting from any of these at any time.

B. "Business entity" means the organization listed as such in Item 1. of the Declarations.

C. "Claim" means:

1. A written demand against you for monetary and non-monetary (including injunctive) relief due to a "wrongful act", including a demand to engage in arbitration or mediation;
2. A civil proceeding against you seeking "damages" commenced by the service of a complaint or similar pleading upon you;
3. A written notification of a "wrongful act", occurrence or circumstance which may result in a potential "claim" under this policy; or
4. A written demand against you for compensatory monetary relief due to "contingent bodily injury or property damage".

D. "Contingent bodily injury or property damage" means "bodily injury" or "property damage" that was not directly or proximately caused by your performance of "professional services".

E. "Damages" mean a monetary judgment, award or settlement, including punitive and exemplary damages (but only to the extent insurable by law). "Damages" includes pre-judgment and post-judgment interest awarded against you on that part of the judgment we pay.

"Damages" does not include:

1. Fines, sanctions, penalties;
2. Taxes or tax penalties;
3. Any amount which an "insured" is legally absolved from payment; or
4. Any amount not insurable under the law pursuant to which this policy shall be construed.



- F. “Defense costs” means reasonable and necessary fees, costs and expenses in the defense or appeal of a “claim” or proceeding brought against you.
- G. “Electronic data” includes, but is not limited to, information, facts or programs stored on, created or used on, or transmitted to or from computer software, including systems and application software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- H. “Insured” means the “named insured” and any other person shown on the Declarations or listed in an endorsement attached to this policy designated as an “insured”.
- I. “Named insured” means the person or organization listed as such in Item 1. of the Declarations.
- J. “Personal and advertising injury” means injury arising out of one or more of the following offenses:
 - 1. False arrest, detention or imprisonment;
 - 2. Malicious prosecution;
 - 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - 4. Oral or written publication in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
 - 5. Oral or written publication, in any manner, of material that violates a person’s right of privacy;
 - 6. The use of another’s advertising idea in the “named insured’s” advertisements; or
 - 7. Infringing upon another’s copyright, trade dress or slogan in the “named entity’s” advertisement.
- K. “Policy period” means the period of time from the inception date shown in the Declarations to the earlier of the expiration date shown in the Declarations or the effective date of termination of this policy.
- L. “Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- M. “Professional services” means those services performed by the “named insured” for a fee or other compensation for a client and as described and set forth on the Declarations of this policy.
- N. “Property damage” means damage to, loss of use of or destruction of any tangible property.
- O. “Related wrongful act” means any actual or alleged separate or series of “wrongful acts” directly arising out of or related to the same or similar act, error, omission, service, transaction, event, representation, statement, practice, advice, decision or circumstances.
- P. “Retroactive date” means the date shown as such in the Declarations. The “retroactive date” is the earliest date on which a “wrongful act” can take place for which coverage will be available for a “claim” made and reported under this policy.
- Q. “Wrongful act” means any negligent act, error, omission, misstatement or misleading statement in an “insured’s” performance of “professional services”.