



## EMPLOYEE BENEFITS LIABILITY COVERAGE

Refer to the Declarations or Supplemental Declarations if information is not shown on this form.  
**We** provide coverage under this endorsement subject to the **terms** contained in **your** policy.

The Limits Of Liability for **Employee** Benefits Liability Coverage are specified in the Schedule shown below. The Limits Of Liability are in addition to, and will not reduce, the limits of liability provided elsewhere under the policy.

### SCHEDULE

Limits Of Liability		Each <b>Employee</b> Deductible
Each <b>Employee</b>	\$	\$
Aggregate	\$	

### A. DEFINITIONS

The following definitions apply only to the **Employee** Benefits Liability Coverage and do not modify the underlying policy in any way. If any of these terms are defined elsewhere in **your** policy, only the definition provided in this section applies to the **Employee** Benefits Liability Coverage.

1. **Administration** means:
  - a. Giving counsel, other than legal advice, to **employees**, including their dependents and beneficiaries, regarding the eligibility for, or the scope of, the **employee benefits program**;
  - b. Processing or handling of records in connection with the **employee benefits program**; or
  - c. Implementing, continuing or terminating an **employee's** participation in any part of the **employee benefits program**.

**Administration** does not include the processing or handling of any payroll deductions.

2. **Cafeteria plans** means plans authorized by applicable law to allow **employees** to elect to pay for certain benefits with pre-tax dollars.
3. **Claim** means any demand or **suit** made by an **employee** or an **employee's** dependents or beneficiaries, for damages resulting from an act, error or omission.
4. **Employee** means a person currently employed, formerly employed, on leave of absence, disabled or retired. **Employee** includes a **leased worker** but does not include a **temporary worker**.
5. **Employee benefits program** means a program providing some or all of the following benefits, when provided through a **cafeteria plan** or otherwise:
  - a. Any group life insurance, group accident or health insurance, dental, vision and hearing plans, and flexible spending accounts, provided that only the **employee** may subscribe to the benefits and such benefits are made generally available to those **employees** who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, **employee** savings plans, **employee** stock ownership plans, stock subscription plans and pension plans, provided that only **employees** may subscribe to those benefits and such benefits are made generally available to all **employees** who are eligible under the plan for such benefits;
  - c. Workers' compensation, unemployment compensation, disability benefits and social security benefits;
  - d. Vacation time, leaves of absence, tuition assistance plans, and subsidizations for transportation and health club costs; and
  - e. Any other similar benefits made generally available to those **employees** who satisfy the plan's eligibility requirements.
6. **Insured** means:
  - a. Each of the following is an **insured** under the conditions and limitations set forth below. When **you**

are:

- 1) An individual, both **you** and **your** spouse are **insureds**, but only with respect to the conduct of a **business** of which **you** are the sole proprietor.
- 2) A partnership or joint venture, **you** are an **insured** and any partner or member and their spouses are **insureds**, but only with respect to the conduct of **your business**.
- 3) An organization other than a partnership, joint venture or limited liability company, **you** are an **insured**, and the executive officers and directors are **insureds**, but only with respect to their duties as executive officers and directors. Stockholders are also **insureds**, but only with respect to their liability as stockholders.
- 4) A limited liability company:
  - a) **You** are an **insured**;
  - b) The members of the limited liability company are **insureds**, but only with respect to the conduct of **your business**; and
  - c) The managers of the limited liability company are **insureds**, but only with respect to their duties as managers.
- 5) A trust, **you** are an **insured** and **your** trustees are **insureds**, but only with respect to their duties as trustees.
- b. Each of the following is also an **insured**:
  - 1) **Employees** **you** have authorized to administer **your employee benefits program**.
  - 2) Any person or organization having proper temporary custody of **your** property if **you** die, only until **your** legal representative has been appointed.
  - 3) **Your** legal representative when **you** die, but only with respect to duties as **your** fiduciary. **Your** legal representative will have all **your** rights and duties under this **Employee** Benefits Liability Coverage.

No person or organization qualifies as an **insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not named in the Declarations.

7. **Leased worker** means a person leased to **you** from a labor leasing firm under a written contract. This does not include a **temporary worker**.
8. **Suit** means a civil proceeding in which damages because of any act, error or omission to which this coverage applies are alleged. **Suit** includes an arbitration proceeding or any other alternative dispute resolution proceeding alleging such damages, and to which **you** must submit, or submit with **our** consent.
9. **Temporary worker** means a person provided to **you** as a substitute for an **employee** on leave or to fill a short-term or seasonal **business** need.

## **B. EMPLOYEE BENEFITS LIABILITY COVERAGE**

### **1. WHAT WE PAY FOR**

**We** pay those sums when the **insured** is legally obligated to pay as damages because of any act, error or omission to which this coverage applies.

**We** will have the right and duty to defend the **insured** against any **suit** seeking such damages, even if any of the allegations of the **suit** are groundless, false or fraudulent, provided the **suit** originates from an act, error or omission not otherwise excluded. **We** may make, at **our** option, any investigation and settle any **claim** or **suit** that **we** decide is appropriate. However, the amount **we** pay for damages will be limited as described in the How Much **We** Pay For Loss Or Claim section of this endorsement. **We** are not obligated to provide a defense, after **we** have paid, either by judgment or settlement, an amount equal to **our** limit of liability. No other obligations or liability to pay sums, or to perform acts or services is covered, unless specifically provided for in the Supplementary Payments.

a. **Employee** Benefits Liability Coverage applies only if:

- 1) The loss results from a negligent act, error or omission in the **administration** of **your employee benefits program** either by the **insured** or a person for whose acts the **insured** is legally liable; and
- 2) Such act, error or omission first occurs during the policy period and in the **coverage territory**.

## C. EXCLUSIONS

Only the following exclusions will apply to the coverages provided under this endorsement.

*We* do not pay for:

1. **Available Benefits**- Any *claim* for benefits when such benefits are available, with reasonable efforts and cooperation of the *insured*, from the applicable accrued funds or other valid and collectible insurance.
2. **Employment Practices**-Damages to a person arising out of any actual, alleged or threatened:
  - a. Refusal to employ such person;
  - b. Termination of employment of such person; or
  - c. Policies, practices, acts or omissions in the workplace including, but not limited to, coercion, defamation, demotion, evaluation, discipline, harassment, humiliation, intimidation, forced transfer, reassignment or reprisal, discrimination or malicious prosecution related to the employment of such person.
3. **ERISA**-Damages an *insured* is liable for because of liability imposed on a fiduciary by ERISA (Employee Retirement Income Security Act of 1974) or as amended, or any similar federal, state or local statutes.
4. **Failure To Perform A Contract**-Damages arising out of a failure of any insurer to perform a contract.
5. **Investment Advice And Performance**-Any *claim* based on:
  - a. The failure of any investment to perform;
  - b. Errors in providing information on past performance of investments; or
  - c. Advice given to a person regarding their choice to participate in, or not participate in, any part of the *employee benefits plan*.
6. **Intentional Acts**-Damages arising out of intentional, criminal, dishonest, fraudulent or malicious act, error or omission by any *insured*, including willful or reckless violation of any statute.
7. **Lack of Sufficient Funds**-Damages arising out of a lack of sufficient funds to meet the obligations of any plan, included in the *employee benefits plan*.
8. **Other Coverages**-Damages for *bodily injury, property damage, advertising injury or personal injury* or where coverage is available through Coverage L or Coverage P of *your* policy.
9. **Taxes, Fines Or Penalties**-Payment or reimbursement of taxes, fines or penalties of any kind imposed on the *insured*.
10. **Workers' Compensation**-Any *claim* arising out of *your* failure to comply with the requirements of any workers' compensation, unemployment compensation, disability benefits or social security law, or under any similar law.

## D. SUPPLEMENTARY PAYMENTS

The following Supplementary Payments will apply only to the coverages provided under this endorsement. Supplementary Payments are in addition to the limits of liability set forth in the How Much *We* Pay For Loss Or Claim section of this endorsement. Any Supplementary Payments language that appears elsewhere in *your* policy will not apply to this endorsement.

1. **Claims And Defense Expense Coverage**-*We* pay the following in connection with a *claim we* investigate or settle, or a *suit* defended by *us*:
  - a. Court costs charged against the *insured*, not including attorney fees and expenses;
  - b. Expenses incurred by *us*;
  - c. Proven loss of earnings by the *insured*, up to \$250 per day, for time away from work at *our* request;
  - d. Other necessary expenses incurred at *our* request;
  - e. Prejudgment interest awarded against the *insured* on that part of the judgment *we* pay. If *we* make an offer to pay the applicable limit of liability, *we* will not pay any prejudgment interest based on that period of time after the offer;
  - f. All interest on the full amount of a judgment accruing after entry of a judgment and before *we* offer to pay, deposit in court or pay that portion of the judgment that is within the applicable limit of liability; and
  - g. Premiums on appeal bonds or attachment bonds up to *our* limit of liability. *We* are not required to apply for or furnish any bonds.

## E. ORDERLY TRANSFER OF DUTIES

The following Orderly Transfer of Duties will apply only to the coverages provided under this endorsement. Any Orderly Transfer Of Duties language that appears elsewhere in **your** policy will not apply to this endorsement.

1. If **we** determine covered **claims** or **suits** which have been reported to **us** may use up the Limits Of Liability shown in the Schedule in the payment of settlement or judgments, **we** will notify the first named **insured** in writing, as soon as is practicable, of this circumstance.
2. When a limit of liability referred to in 1. above has been used up in the payment of settlement or judgments:
  - a. As soon as practicable, **we** will notify the first named **insured** in writing that a limit of liability has been used up and that **our** duty to defend **suits** subject to that limit has terminated.
  - b. **We** will:
    - 1) Initiate and cooperate in the orderly transfer of control to any appropriate **insured**, of any and all **claims** or **suits** seeking damages subject to a limit of liability, and which are reported to **us** before the limit is used up. That **insured** must cooperate in the transfer of these **claims** or **suits**;
    - 2) Take such steps as **we** deem necessary to avoid default in, or to continue the defense of, such **claims** or **suits** until the transfer is completed, only if the appropriate **insured** cooperates with **us** to complete the transfer; and
    - 3) Take no action to defend any **claims** or **suits** subject to a limit of liability which have been used up.
  - c. The first named **insured** and any other **insured** involved in a **suit** that is seeking damages subject to the limit, must take control of the defense of the **suit**, at their expense, within an agreed upon time between the appropriate **insured** and **us**, or as soon as practicable in the absence of any agreement.
3. The first named **insured** is obliged to reimburse expenses incurred by **us** during the transfer of **claims** or **suits** as described in 2.b. above. The obligation of the first named **insured** to reimburse **our** expenses will begin on:
  - a. The date on which a limit of liability is used up, if **we** sent the written notice as described in 1. above; or
  - b. The date on which **we** sent the written notice as described in 2.a. above, if **we** did not send the written notice as described in 1. above.
4. The exhaustion of a limit of liability by payment of judgments or settlements, and the resulting termination of **our** duty to defend, will not be waived by **our** failure to comply with any of the provisions of 1., 2. or 3. above.

## F. HOW MUCH WE PAY FOR LOSS OR CLAIM

The following How Much **We** Pay For Loss Or Claim provisions will apply only to the coverages provided under this endorsement. Any How Much **We** Pay For Loss Or Claim language that appears elsewhere in **your** policy will not apply to this endorsement.

Settlement of liability losses covered by this endorsement will be made in accordance with the following provisions:

1. The Limits of Liability shown in the Schedule and the conditions set forth below fix the maximum amounts **we** pay for loss regardless of the number of:
  - a. **Insureds**;
  - b. Claimants;
  - c. Persons or organizations who sustain injury or damage;
  - d. **Claims** made or **suits** brought;
  - e. Policies involved;
  - f. Acts, errors or omissions; or
  - g. Benefits contained in **your employee benefits program**.
2. The Aggregate Limit Of Liability is the most **we** pay for damages during a policy period because of acts, errors or omissions negligently committed in the **administration** of **your employee benefits program**.
3. The Each **Employee** Limit Of Liability, subject to 2. above, is the most **we** pay for all damages sustained by any one **employee**, including damages sustained by the **employee's** dependents and beneficiaries,

resulting from an act, error or omission; or multiple related acts, errors or omissions negligently committed in the **administration of your employee benefits program**.

However, the amount payable under **Employee Benefits Liability Coverage** will not exceed, and is subject to, the limitations and restrictions that apply to the payment of benefits in a plan included in **your employee benefits program**.

4. **Our** obligation to pay damages on behalf of the **insured** applies only to the amount in excess of the Each **Employee Deductible** shown in the Schedule. The Limits Of Liability will not be reduced by the amount of the deductible. In addition:
  - a. The Each **Employee Deductible** applies to all damages sustained by any one **employee**, including the **employee's** dependents and beneficiaries, resulting from all acts, errors or omissions to which this coverage applies;
  - b. The **terms** of this endorsement apply regardless of the application of the deductible, including:
    - 1) **Our** right and duty to defend any **suits** seeking damages; and
    - 2) **Your** duties, and the duties of any involved **insured**, in the event of an act, error, omission or **claim**; and
  - c. **We** may pay any portion or all of the deductible to bring about a settlement of a **claim** or **suit**. Upon notification of such action, **you** will promptly reimburse **us** for the amount of the deductible **we** have paid on **your** behalf.
5. The policy period shown in the Declarations may be for a one-year period or longer. However, for the purpose of determining the Aggregate Limit Of Liability described in this section, policy period means a one-year period beginning with the inception date of the policy and for each subsequent one-year period, if applicable.
6. The provisions of this section are extended to include an increase in the Aggregate Limit Of Liability in proportion to any policy extension whether required by the issuance of a late or incomplete conditional renewal notice, late nonrenewal notice or other reason.
7. The Aggregate Limit Of Liability applies separately to each consecutive one-year period beginning with the inception date **your** policy shown in the Declarations. The Aggregate Limit Of Liability applies separately to any remaining policy period of less than twelve months, unless **your** policy has been extended after it was written. In that case, the additional period will be considered part of the last preceding period for the purpose of determining limits.
8. Insurance Under More Than One Policy-  
When valid and collectible insurance under more than one policy is available to the **insured** for a loss covered under this endorsement, **our** obligations are as follows:
  - a. As Primary Insurance-
    - 1) Insurance under this endorsement is primary except as provided in b. below. The amount of **our** liability does not change unless any other insurance available to the **insured** for the covered loss is also primary. If the other insurance is also primary, **we** will share in the loss as follows:
      - a) If the other insurance provides for contribution by equal shares, **we** will pay equal amounts with other insurers until:
        - i) The lowest applicable limit under any one policy is reached; or
        - ii) The full amount of the loss is paid.If part of the loss remains unpaid, **we** will pay an equal share with the other insurers until the full amount of the loss is paid, or until **we** have paid **our** limit of liability in full.
      - b) If the other insurance does not provide for contribution by equal shares, **we** will pay, up to **our** limit of liability, that proportion of the loss to which **our** applicable limit under this endorsement bears to the total applicable limit for all insurance covering the loss.
  - b. As Excess Insurance-
    - 1) Insurance under this endorsement is excess over any other insurance if the other insurance, whether primary, excess, contingent or on any basis, has an effective date prior to the beginning of the policy period shown in the Declarations.
    - 2) When this insurance is excess over any other insurance:
      - a) **We** will have no duty to defend any **claim** or **suit** that any other insurer has a duty to defend. If no other insurer defends, **we** will do so. However, **we** will be entitled to the **insured's** rights against all those other insurers.
      - b) **We** will pay **our** share of the amount of loss, if any, that exceeds the sum of:

- i) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- ii) The total of all deductibles and self-insured amounts required by such other insurance.
- c) **We** will share the remaining loss with any other insurance that is not described in this excess insurance provision and that does not specifically apply in excess of the Limits Of Liability shown in the Schedule.

## G. WHAT *YOU* MUST DO IN CASE OF LOSS

The following What **You** Must Do In Case Of Loss provision will apply only to the coverages provided under this endorsement. Any What **You** Must Do In Case of Loss language that appears elsewhere in **your** policy will not apply to this endorsement.

1. **Notice**-In the event of an act, error or omission that might result in a **claim** under this endorsement, **you** must give **us** or **our** agent notice, in writing if requested, as soon as practicable including:
  - a. **Your** name and policy number;
  - b. The time, date, place and circumstances of the act, error or omission; and
  - c. Names and addresses of any potential claimants and witnesses.

Failure to give any notice required to be given by this liability policy within the time prescribed will not invalidate any **claim** made by the **insured**, injured person or any other claimant, unless the failure to provide timely notice has prejudiced **us**, except when it will be shown not to have been reasonably possible to give such notice within the prescribed time, and that notice was given as soon as was reasonably possible thereafter.
2. **Document**-In the event a **claim** is made or **suit** is brought against an **insured**, **you** must:
  - a. Record all details of the **claim** or **suit** and the date received;
  - b. Notify **us** or **our** agent as soon as practicable; and
  - c. Send **us** or **our** agent written notice of the **claim** or **suit** as soon as practicable.
3. **Cooperation**-**You** and any **insureds** involved must:
  - a. Immediately forward to **us** copies of all notices, demands or legal papers received in connection with a **claim** or **suit**;
  - b. Provide any needed authorizations for **us** to obtain documentary evidence, records and other investigative information; and
  - c. Cooperate with **us** in the investigation or conduct of the **claim** or defense of a **suit**, including but not limited to:
    - 1) Making settlements;
    - 2) Securing and giving evidence;
    - 3) Attending depositions, hearings and trials;
    - 4) Obtaining the attendance of witnesses; and
    - 5) Enforcing any right of contribution or indemnification against any party who may be liable to the **insured** for the injury or damage.
4. **Volunteer Payments**-Without **our** consent, no **insured** will, except at their own cost, voluntarily make any payments, assume any obligations, or incur any other expenses.

All other **terms** and conditions remain unchanged.