

# EMPLOYEE BENEFITS LIABILITY COVERAGE FORM – CLAIMS MADE (MULTINATIONAL)

**This is claims made insurance coverage. Except as otherwise provided it applies only to claims made against the insured during the policy period. Please read the entire form carefully.**

Various provisions in this form restrict coverage. Read the entire form 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 "employee benefits injury" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Employee Benefits Liability Coverage. This insurance does not apply to "employee benefits injury" which occurred before the retroactive date, if any, shown in the Declarations or which occurs after the policy period. The negligent act, error or omission must take place in the "coverage territory". We will have the right and duty to defend any "claim" or "suit" seeking such "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 alleged 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 under Employee Benefits Liability Coverage. This applies both to "claims" and "suits" pending at that time and to those filed thereafter.
- b. This insurance applies to an "employee benefits injury" only if:
  - (1) A "claim" for "damages" because of the "employee benefits injury" is first made against any insured during the policy period; and
  - (2) At the time you applied for this insurance you had no knowledge of any "claim" or "suit" or of any "employee benefits injury" which might reasonably be expected to result in a "claim" or "suit" except as you had reported to us in writing at the time you so applied.
- c. 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 an insured or by us, whichever comes first.
- d. All "claims" for "damages" because of "employee benefits injury" to the same person or organization 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. The failure by an insured to comply with any law concerning workers compensation, unemployment compensation, social security, disability benefits law or any similar legislation that may be enacted or fiduciary liability or fiduciary responsibility imposed by the Employee Retirement Income Security Act of 1974, as amended, or any similar legislation that may be enacted.
- b. "Bodily injury", "property damage" or "personal and advertising injury".
- c. Any dishonest, fraudulent, criminal or malicious act.
- d. The failure of any investment or saving program to perform as represented by an insured.
- e. An "employee benefits injury" that arises out of advice given by any insured to an employee to participate or not to participate in any "employee benefits program".

- f. The failure of any person or organization to perform any obligation or to fulfill any guarantee with respect to:
  - (1) The payment of benefits under "employee benefits programs"; or
  - (2) The providing, handling or investing of funds related thereto.
- g. "Bodily injury":
  - (1) Arising out of any:
    - (a) Refusal to employ;
    - (b) Termination of employment;
    - (c) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity;
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury; and
- (3) To any and all acts, committed by:
  - (a) The insured;
  - (b) The insured's employees; or
  - (c) Additional insureds or their employees
 whether committed with or without the knowledge of the insured or by or at the direction of the insured, the insured's employees or any additional insureds named on the policy.

- h. "Personal and advertising injury":
  - (1) Arising out of any:
    - (a) Refusal to employ;
    - (b) Termination of employment;
    - (c) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions.

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  - (b) The insured's employees; or
  - (c) Additional insureds or their employees
 whether committed with or without the knowledge of the insured or by or at the direction of the insured, the insured's employees or any additional insureds named on the policy.

- i. Loss arising out of failure of performance of contract by any insurer.
- j. Loss arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefits program".
- k. 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.
- l. Loss arising out of the investment, divestment or non-investment of funds.

### 3. SUPPLEMENTARY PAYMENTS – EMPLOYEE BENEFITS LIABILITY COVERAGE

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 \$500 a day because of time off from work.
- d. All costs taxed against the insured in the "suit".
- e. 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. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
  - a. Any other person for whose acts you are legally liable, provided such person is authorized to act in the "administration" of your "employee benefits programs".
  - 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 end of the policy period; and
  - b. Employee Benefits Liability Coverage does not apply to "employee benefits injury" 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, joint venture or limited liability company 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 that result in loss; or
  - e. Plans included in your "employee benefits program".
2. The Employee Benefits Liability Aggregate Limit is the most we will pay for all "damages" to which this insurance applies.
3. Subject to 2. above the Each Claim Limit is the most we will pay for all "damages" with respect to any one "claim".
4. All "claims" arising from a single negligent act, error or omission or a series of related negligent acts, errors or omissions in the "administration" of "employee benefit programs" shall be deemed to be a single "claim".

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 4 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 EMPLOYEE BENEFITS INJURY, CLAIM OR SUIT**

- a. You must see to it that we are notified as soon as practicable of an "employee benefits injury" which may result in a "claim". To the extent possible, notice should include:
  - (1) How, when and where the "employee benefits injury" took place; and
  - (2) The names and addresses of any injured persons and witnesses.Notice of an "employee benefits injury" is not notice of a "claim".
- b. If a written "claim" is made or "suit" is brought against any insured, you must see to it that we receive prompt written notice of the "claim" or "suit".
- 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 "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 "employee benefits injury" 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 other than for first aid, 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**

This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis, that is effective prior to the beginning of the policy period shown in the Declarations of this Coverage Part and applies to "damages" on other than a claims-made basis, if:

- a. No retroactive date is shown in the Declarations of this Coverage Part; or

- b. The other insurance has a policy period which continues after the retroactive date shown in the Declarations of this Coverage Part.

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 undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

We will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- a. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- b. The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this excess insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

## 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 in this Coverage Part 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 whom "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.

## SECTION VI – EXTENDED REPORTING PERIODS

- 1. We will provide one or more extended reporting periods, as described below, if:
  - a. This Coverage Part is cancelled or not renewed; or
  - b. We renew or replace this Coverage Part with insurance that:
    - (1) Has a retroactive date later than the date shown in the Declarations of this Coverage Part; or
    - (2) Does not apply to "employee benefits injury" on a claims-made basis.
- 2. A basic extended reporting period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for:
  - a. One year for "claims" arising out of an "employee benefits injury" reported to us, not later than 60 days after the end of the policy period, in accordance with paragraph 2.a. of **SECTION V – EMPLOYEE BENEFITS LIABILITY CONDITIONS**; or
  - b. Sixty days for all other "claims".

The basic extended reporting period does not apply to "claims" that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such "claims".

3. A supplemental extended reporting period of three years duration is available, but only by an endorsement and for an extra charge. This supplemental period starts:
  - a. One year after the end of the policy period for "claims" arising out of an "occurrence" reported to us, not later than 60 days after the end of the policy period, in accordance with paragraph 2.a. of **SECTION V – EMPLOYEE BENEFITS LIABILITY CONDITIONS**; or
  - b. Sixty days after the end of the policy period for all other "claims".

You must give us a written request for the endorsement within 60 days after the end of the policy period. The supplemental extended reporting period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium 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 amount of insurance;
- c. Limits of insurance available under this Coverage Part for future payment of "damages"; and
- d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

This endorsement shall set forth the terms, consistent with this section, applicable to the supplemental extended reporting period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the supplemental extended reporting period starts.

4. Extended reporting periods do not extend the policy period or change the scope of coverage provided. They apply only to "claims" for "employee benefits injury" that occur before the end of the policy period (but not before the retroactive date, if any, shown in the Declarations.)

"Claims" for such injury which are first received and recorded during the basic extended reporting period (or during the supplemental extended reporting period, if it is in effect) will be deemed to have been made on the last day of the policy period.

Once in effect, extended reporting periods may not be cancelled.

5. Extended reporting periods do not reinstate or increase the Limits of Insurance applicable to any "claim" to which this Coverage Part applies, except to the extent described in paragraph 6. of this section.
6. If the supplemental extended reporting period is in effect, we will provide the separate Aggregate Limit of Insurance described below, but only for "claims" first received and recorded during the supplemental extended reporting period.

The separate Aggregate Limit of Insurance will be equal to the dollar amount shown for the Employee Benefits Liability Aggregate Limit shown in the Declarations.

## **SECTION VII – DEFINITIONS**

### **Administration**

"Administration" means:

- a. Giving counsel to your employees or their dependents and beneficiaries, with respect to interpreting the scope of your "employee benefits program" or their eligibility to participate in such program;
- b. Handling records in connection with your "employee benefits program"; and
- c. Starting or stopping any employee's participation in your "employee benefits program".

### **Advertisement**

"Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.

### **Bodily Injury**

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

### **Claim**

"Claim" means a written demand received by any insured for "damages" alleging "employee benefits injury", including the institution of a "suit" for such "damages" against any insured.

### **Coverage Territory**

"Coverage territory" means anywhere in the world other than The United States of America (including its territories and possessions), Puerto Rico or a country or jurisdiction that is subject to trade or other economic sanction or embargo by the United States of America.

### **Damages**

"Damages" means money damages including prejudgment interest awarded against the insured on that part of the judgment we pay. "Damages" do not include:

- a. Fines;
- b. Penalties; or
- c. Damages for which insurance is prohibited by the law applicable to the construction of this Coverage Part.

### **Employee Benefits Injury**

"Employee benefits injury" means injury that arises out of any negligent act, error or omission in the "administration" of your "employee benefits program".

### **Employee Benefits Program**

"Employee benefits program" means a formal program or programs of employee benefits maintained in connection with your business or operation to which participation is limited to employees or those entitled to claim benefits under such plans only through an employee's participation. Such programs may include, but are not limited to:

- a. Group life insurance, group accident or health insurance, profit sharing plans, defined benefit or defined contribution pension plans and stock subscription plans; and
- b. Unemployment insurance, social security benefits, workers' compensation and disability benefits.

### **Personal and Advertising Injury**

"Personal and advertising injury" means injury, including consequential "bodily injury" arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. 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;
- 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;
- e. Oral or written publication of material that violates a person's right of privacy;
- f. The use of another's advertising ideas in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

### **Property Damage**

"Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.

### **Suit**

"Suit" means a civil proceeding in which "damages" because of "employee benefits injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such "damages" are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent.