

RETIRED DIRECTORS ASSURANCE

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- Illinois Union Insurance Comp
- Westchester Surplus Lines Insurance Company



RETIRED DIRECTORS ASSURANCE

In consideration of the payment of the premium and in reliance on all statements made and information furnished by the INSURED PERSON to the INSURER in the APPLICATION, which is hereby made a part hereof, and subject to the foregoing Declarations and to all other terms of this POLICY, the INSURED PERSON and the INSURER agree as follows:

1. INSURING CLAUSE

The INSURER shall pay on behalf of the INSURED PERSON all, or any portion of, NON-INDEMNIFIABLE LOSS that the INSURED PERSON becomes legally obligated to pay by reason of any CLAIM first made against the INSURED PERSON and reported during the POLICY PERIOD for any WRONGFUL ACTS that were actually or allegedly caused, committed, or attempted prior to effective date of the POLICY PERIOD by the INSURED PERSON, but only if:

- (a) the insurer(s) of the UNDERLYING INSURANCE:
 - i. wrongfully refuses to indemnify the INSURED PERSON as required under the terms of the UNDERLYING INSURANCE; or
 - ii. is financially unable to indemnify the INSURED PERSON; or
 - iii. files an action to rescind, or states in writing its intent to rescind, the UNDERLYING INSURANCE; or
- (b) according to the terms and conditions of the UNDERLYING INSURANCE, the insurer(s) of the UNDERLYING INSURANCE is not liable for such NON-INDEMNIFIABLE LOSS of the Insured Person.

For purposes of determining the application of this Clause, a CLAIM shall be deemed to be first made on the date on which the INSURED PERSON first received written notice of such CLAIM.

2. DEFINITIONS

- (a) APPLICATION means the signed, written application for this POLICY and all supplementary information and materials submitted in connection therewith, or with the underwriting of this POLICY, all of which information and materials shall be deemed attached hereto, as if physically attached hereto, and incorporated herein.
- (b) CLAIM means: (i) any demand or any civil, criminal, judicial, administrative, regulatory or arbitration proceeding or investigation against the INSURED PERSON, including any appeal therefrom; and (ii) an EXTRADITION PROCEEDING, including any appeal therefrom.
- (c) COMPANY means the company shown in Item 2 of the Declarations and any SUBSIDIARY thereof, and any such organization as a debtor-in-possession under United States bankruptcy law or an equivalent status under the law of any other country.

- (d) DEFENSE COSTS means that portion of LOSS consisting of reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred in the defense or investigation of a CLAIM and the premium for appeal, attachment or similar bonds, but shall not include wages, salaries, fees, benefits or office expenses of the INSURED PERSON.
- (e) DOMESTIC PARTNER means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the COMPANY.
- (f) EXTRADITION PROCEEDING means a formal written request, pursuant to an applicable treaty, from one country ("Requesting Country") to another country ("Requested Country") to have the INSURED PERSON extradited from the Requested Country to the Requesting Country.
- (g) INSURED PERSON means the individual listed in Item 1 of the Declarations, and the estates, heirs, legal representatives or assigns of such individual in the event of his or her death, and the legal representatives or assigns of such individual in the event of his or her incompetency, insolvency or bankruptcy.
- (h) INSURER means the insurance company indicated in the Declarations.
- (i) INTERRELATED WRONGFUL ACTS means all WRONGFUL ACTS that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- (j) LOSS means any and all amounts that the INSURED PERSON is legally obligated to pay by reason of a CLAIM made against the INSURED PERSON for any WRONGFUL ACT. LOSS shall include but not be limited to compensatory, exemplary, punitive and multiple damages, judgments, settlements, pre-judgment and post-judgment interest, and DEFENSE COSTS; provided, however, that with respect to an EXTRADITION PROCEEDING, LOSS shall solely include, where permissible by law: (i) DEFENSE COSTS incurred by the INSURED PERSON in connection with the defense or appeal of an EXTRADITION PROCEEDING; and (ii) the premium for a bail bond, if bail is available for an EXTRADITION PROCEEDING in the country at issue, but the INSURER shall be under no obligation to provide such bail bond.

LOSS shall not include: (i) taxes, fines or penalties imposed by law ("fines or penalties" do not include punitive, exemplary, or multiple damages); (ii) matters that may be deemed uninsurable under the law pursuant to which this POLICY shall be construed; or (iii) any amount incurred by the INSURED PERSON with respect to any matter that is not at that time a CLAIM, even if such amount also benefits the defense of a CLAIM and even if such matter subsequently gives rise to a CLAIM.

The insurability of punitive, exemplary and multiple damages shall be governed by the law of the applicable jurisdiction that most favors coverage for such punitive, exemplary and multiple damages. If the INSURED PERSON presents to the INSURER a written opinion from legal counsel that such punitive, exemplary or multiple damages are insurable under such applicable law, the INSURER shall not challenge that determination.

- (k) NON-INDEMNIFIABLE LOSS means LOSS for which the COMPANY is not required or permitted, or if it refuses, to indemnify or pay on behalf of the INSURED PERSON;

provided LOSS shall only be deemed NON-INDEMNIFIABLE LOSS if the INSURED PERSON complies with Clause 14 (Subrogation) below.

- (l) POLICY means this insurance policy, including the APPLICATION, the Declarations, and any endorsements and addendums hereto issued by the INSURER.
- (m) POLICY PERIOD means the period of time stated in Item 3 of the Declarations. If this POLICY is cancelled in accordance with Clause 12 (Cancellation) below, the POLICY PERIOD shall end upon the effective date of such cancellation.
- (n) SUBSIDIARY means any entity, other than a partnership, in which the COMPANY named in Item 2 of the Declarations:
 - i. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the management board if such entity is a limited liability company; or
 - ii. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a COMPANY, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the management board if such entity is a limited liability company, either directly or indirectly, in any combination, by one or more other SUBSIDIARIES; provided, however, an entity shall be considered a SUBSIDIARY for purposes of the coverage afforded under this POLICY solely with respect to WRONGFUL ACTS committed or allegedly committed by the INSURED PERSON at a time when the COMPANY possessed the ownership interests or the right described in paragraphs i and ii above.
- (o) UNDERLYING INSURANCE means any directors and officers liability insurance policy that affords or purports to afford coverage during the POLICY PERIOD, subject to its terms and conditions, to the INSURED PERSON for WRONGFUL ACTS in his or her capacity as a director, officer or employee of the COMPANY.
- (p) WRONGFUL ACT means any actual or alleged error, misstatement, misleading statement or act, omission, neglect, or breach of duty by the INSURED PERSON while acting in his or her capacity as a duly elected or appointed director of the COMPANY, or any other matter claimed against the INSURED PERSON by reason of his or her serving in such capacity.

3. NON-RESCINDABILITY

This POLICY shall not be rescinded by the INSURER in whole or in part for any reason.

4. EXCLUSIONS

The INSURER shall not be liable to make any payment for LOSS in connection with that portion of any CLAIM made against the INSURED PERSON:

- (a) alleging, based upon, arising out of, or attributable to the INSURED PERSON having gained any personal profit to which the INSURED PERSON was not legally entitled if a final adjudication adverse to the INSURED PERSON establishes that the INSURED PERSON gained any such personal profit; however, this exclusion shall not apply to DEFENSE COSTS;

- (b) for the return by the INSURED PERSON of any improper or illegal remuneration paid in fact to the INSURED PERSON if a final adjudication adverse to the INSURED PERSON establishes that such remuneration is improper or illegal, or if the INSURED PERSON agrees to repay to the COMPANY such remuneration under a settlement agreement; however, this exclusion shall not apply to DEFENSE COSTS;
- (c) alleging, based upon, arising out of, or attributable to any deliberately fraudulent or deliberately criminal act, error or omission of, or any willful violation of law by, the INSURED PERSON if a final adjudication adverse to the INSURED PERSON establishes the INSURED PERSON committed such deliberately fraudulent or deliberately criminal act, error or omission, or willful violation of law; however, this exclusion shall not apply to DEFENSE COSTS;
- (d) alleging, based upon, arising out of, or attributable to:
 - i. any WRONGFUL ACT, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this POLICY is a renewal or replacement or which it succeeds in time; or
 - ii. any other WRONGFUL ACT whenever occurring which, together with a WRONGFUL ACT which has been the subject of such notice, would constitute INTERRELATED WRONGFUL ACTS.
- (e) for any actual or alleged error, misstatement, misleading statement or act, omission, neglect or breach of duty by the INSURED PERSON while acting in his or her capacity as a director or officer of any entity other than as a director of the COMPANY, or by reason of his or her being a director or officer of such other entity.

5. SPOUSAL AND DOMESTIC PARTNER LIABILITY

If a CLAIM against the INSURED PERSON includes a claim against the INSURED PERSON'S lawful spouse or DOMESTIC PARTNER solely by reason of: (i) such spouse's or DOMESTIC PARTNER'S status as a spouse or DOMESTIC PARTNER of the INSURED PERSON, or (ii) such spouse's or DOMESTIC PARTNER'S ownership interest in property which the claimant seeks as recovery for alleged WRONGFUL ACTS of the INSURED PERSON, all loss which such spouse or DOMESTIC PARTNER becomes legally obligated to pay by reason of such CLAIM shall be treated for purposes of this POLICY as LOSS which the INSURED PERSON becomes legally obligated to pay by reason of the CLAIM made against the INSURED PERSON. Such spousal or DOMESTIC PARTNER loss shall be covered under the POLICY only if and to the extent such loss would be covered if incurred by the INSURED PERSON.

The coverage extension afforded by this Clause does not apply to the extent such CLAIM alleges a wrongful act or omission by the INSURED PERSON'S spouse or DOMESTIC PARTNER.

6. LIMIT OF LIABILITY

The LIMIT OF LIABILITY in Item 4 of the Declarations is the maximum aggregate liability of the INSURER under this POLICY for all covered LOSS arising from all CLAIMS first made during the POLICY PERIOD, regardless of the time of payment of LOSS by the INSURER or the number of CLAIMS. DEFENSE COSTS shall be part of and not in addition to the LIMIT OF LIABILITY as stated in Item 4 of the Declarations, and payment by the INSURER of DEFENSE COSTS shall reduce the applicable LIMIT OF LIABILITY.

7. INSURED PERSON'S REPORTING DUTIES

The INSURED PERSON shall, as a condition precedent to the INSURED PERSON'S rights under this POLICY:

- (a) provide to the COMPANY written notice of any CLAIM made against the INSURED PERSON as soon as practicable, but in no event later than sixty (60) days, after the INSURED PERSON first learns of such CLAIM, and request in that notice indemnification from the COMPANY for all LOSS of the INSURED PERSON arising out of such CLAIM;
- (b) provide to the INSURER written notice of such CLAIM as soon as practicable during the POLICY PERIOD, but in no event later than sixty (60) days after the INSURED PERSON first learns of such CLAIM, as well as copies of all written notices provided to the COMPANY pursuant to paragraph (a) above. The INSURED PERSON shall also inform the INSURER of the COMPANY'S response to the INSURED PERSON'S request for indemnification as soon as practicable after first learning of such response, and provide copies to the INSURER of any such responses that are in writing.

The notice described in paragraph (b) above shall include the nature of the WRONGFUL ACT, the alleged injury, the names of the claimants, and the manner in which the INSURED PERSON first became aware of the CLAIM, as well as copies of any documents evidencing the CLAIM, including any written demand or complaint. The INSURED PERSON shall cooperate with the INSURER and give such additional information as the INSURER may reasonably require.

If the INSURED PERSON fails to provide notice of a CLAIM to the INSURER as specified in paragraph (b) above, the INSURER shall not be entitled to deny coverage for the CLAIM based solely upon late notice unless the INSURER can demonstrate its interests were materially prejudiced by reason of such late notice.

The INSURER shall have no obligations under the POLICY to provide coverage for any LOSS arising out of any CLAIM reported by the INSURED PERSON under this Clause unless and until the COMPANY refuses in writing to indemnify the INSURED PERSON for such LOSS.

8. SELECTION OF COUNSEL AND CONSENT

The INSURED PERSON shall have the right to select counsel to investigate and defend a CLAIM, provided, however, that the INSURED PERSON shall notify the INSURER of such counsel within five business days from the date he or she makes the decision to select such counsel, and such counsel must be consented to in writing by the INSURER.

The INSURED PERSON shall not offer to settle or settle, incur any DEFENSE COSTS, assume any obligation, admit any liability or stipulate to any judgment with respect to any CLAIM that is or may be covered in whole or in part by, or that may cause liability to attach under, this POLICY without the INSURER'S prior written consent, which shall not be unreasonably withheld. The INSURER shall not be liable for or as a result of any offer to settle, settlement, DEFENSE COSTS, assumed obligation, admission of liability or stipulated judgment to which it has not given its prior written consent.

The obligations of the INSURED PERSON under this Clause are conditions precedent to any rights otherwise afforded under this POLICY for the INSURED PERSON.

9. ASSISTANCE AND COOPERATION

The INSURED PERSON shall provide to the INSURER all information, assistance and cooperation which the INSURER may reasonably request, and the INSURED PERSON shall use diligence and prudence in the investigation, defense, negotiation of settlement and settlement of any CLAIM. The INSURED PERSON shall do nothing that could prejudice the INSURER'S position or its potential or actual rights of recovery with respect to any CLAIM.

The INSURER has no duty to defend any CLAIM and shall not be called upon to assume charge of the investigation, settlement or defense of any CLAIM. However, the INSURER shall have the right, but not the duty, and shall be given the opportunity to fully and effectively associate with the INSURED PERSON, and shall be consulted in advance, regarding the control, investigation, defense, negotiation of settlement and settlement of any CLAIM that is or may be covered in whole or in part by, or that may cause liability to attach under, this POLICY.

The obligations of the INSURED PERSON under this Clause are conditions precedent to any rights otherwise afforded under this POLICY for the INSURED PERSON.

10. ADVANCEMENT OF DEFENSE COSTS

Except in those instances when the INSURER has denied liability for the CLAIM because of the application of one or more exclusions, or other coverage issues, if the insurer(s) of the UNDERLYING INSURANCE fails or refuses to advance DEFENSE COSTS as provided in Clause 1 (Insuring Clause), the INSURER shall, upon request and if proper documentation accompanies the request, advance on behalf of the INSURED PERSON such DEFENSE COSTS constituting NON-INDEMNIFIABLE LOSS on a current basis. In the event that the INSURER so advances DEFENSE COSTS, the INSURED PERSON, to the fullest extent legally permitted, agrees to repay to the INSURER, upon demand, all monies advanced in the event a final adjudication establishes that the INSURER has no liability hereunder, or a portion of such monies advanced in the event a final adjudication establishes that the INSURER is only liable for such portion based upon a finding that only a portion of LOSS is covered.

11. OTHER INSURANCE

Subject to Exclusion 4(d), such insurance as is provided by this POLICY shall apply only as excess over, and shall not contribute with, any other valid insurance (other than the UNDERLYING INSURANCE), whether such insurance is issued before, concurrent with, or after inception of this POLICY. This POLICY shall specifically be excess of any other valid insurance pursuant to which any other insurer has a duty to defend a CLAIM for which this POLICY may be obligated to pay LOSS. This POLICY shall also be excess of any indemnification provided to, or payments made on behalf of, the INSURED PERSON by the COMPANY. Nothing herein shall be construed to make this POLICY subject to the terms of other insurance, or provide coverage for any LOSS other than NON-INDEMNIFIABLE LOSS.

12. CANCELLATION

This POLICY may not be cancelled by the INSURED PERSON. This POLICY may only be cancelled by the INSURER for nonpayment of premium. Such cancellation shall be effected by the sending of notice, in accordance with Clause 13 (Notice) below, to the INSURED PERSON stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The effective date of cancellation stated in the notice shall become the end of the POLICY PERIOD. All premiums paid or due for this POLICY shall be fully earned at the inception date of the POLICY.

13. NOTICE

All notices under any provision of this POLICY shall be in writing and given by prepaid express courier, certified mail, or facsimile transmission properly addressed to the INSURED PERSON at the address shown in Item 1 of the Declarations. Notice so given shall be deemed to be received and effective upon actual receipt thereof by the INSURED PERSON or one day following the date such notice is sent, whichever is earlier. Notice to the INSURER of any CLAIM shall be sent to the Director of Claims at the address shown in Item 6.A of the Declarations. All other notices to the INSURER shall be sent to the Divisional President at the address shown in Item 6.B of the Declarations.

14. SUBROGATION

In the event of payment hereunder, the INSURER shall be subrogated to the extent of such payment to the INSURED PERSON'S rights of recovery thereof, including but not limit to the right to recover from the COMPANY or the insurer(s) of the UNDERLYING INSURANCE for nonpayment of indemnity due and owing to the INSURED PERSON by the COMPANY or the insurer(s), respectively. The INSURED PERSON shall execute all papers reasonably required and shall take all reasonable actions that may be necessary to secure the rights of the INSURER, including the execution of such documents necessary to enable the INSURER effectively to bring suit in the name of the INSURED PERSON, including but not limited to an action against the COMPANY or the insurer(s) of the UNDERLYING INSURANCE for nonpayment of indemnity due and owing to the INSURED PERSON by the COMPANY or the insurer(s), respectively.

15. BANKRUPTCY

Bankruptcy or insolvency of the COMPANY or the INSURED PERSON shall not relieve the INSURER of its obligations nor deprive the INSURER of its rights or defenses under this POLICY.

16. APPEALS

In the event the INSURED PERSON or the insurer(s) of the UNDERLYING INSURANCE elect not to appeal a judgment, the INSURER may elect to make such appeal at its own expense, and shall be liable for any increased award, taxable costs and disbursements and any additional interest incidental to such appeal, to the extent such payments are not covered by other valid insurance.

17. WORLDWIDE EXTENSION

Where legally permissible, this POLICY shall apply to any CLAIM made against the INSURED PERSON anywhere in the world.

18. ARBITRATION AND MEDIATION

Only if requested by the INSURED PERSON, the INSURER shall submit any dispute, controversy or claim arising out of or relating to this POLICY or the breach, termination or invalidity thereof to non-binding mediation and/or non-binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot agree on the arbitration rules and procedures, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the INSURED PERSON, one arbitrator selected by the INSURER, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

19. CURRENCY

All premiums, limits, retentions, LOSS and other amounts under this POLICY are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated, or another element of LOSS under this POLICY is stated in a currency other than United States of America dollars, payment under this POLICY shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is finally agreed upon, or the other element of LOSS is due, respectively, or if not published on such date, the next date of publication of *The Wall Street Journal*.

20. CHANGES, ASSIGNMENTS, AND ENFORCEABILITY

The terms and conditions of this POLICY shall not be waived or changed, nor shall an assignment of interest under this POLICY be binding. In the event that any provision of this POLICY shall be declared or deemed to be invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portion of this POLICY.

21. HEADINGS

The descriptions in the headings and sub-headings of this POLICY are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.