



Great American E&S Insurance Company

SPECIMEN

ExecProsm
Fiduciary Protection

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Fiduciary Liability Insurance Policy

Great American E&S Insurance Company - Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

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THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreement

The **Insurer** shall:

- A. assume the Duty to Defend any **Claim** covered by this Policy and made against the **Insureds** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act** by an **Insured** or any person for whom the **Insured** is legally responsible even if the allegations of such **Claim** are groundless, false or fraudulent; and
- B. pay on behalf of the **Insureds** all **Loss** which the **Insureds** shall be legally obligated to pay as a result of a **Claim** described in I.A. above.

Section II. Discovery Period

- A. In the event the **Insurer** refuses to renew this Policy or the **Corporation** chooses to cancel or not renew this Policy, the **Corporation** shall have the right, upon payment of fifty percent (50%) of the annual premium, (or if the **Policy Period** is other than annual, fifty percent (50%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the **Discovery Period**.
- B. As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the **Discovery Period** must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C. The purchase of the **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Discovery Period** is part of, and not in addition to, the **Policy Period**.

Section III. Definitions

- A. "**Administration**" shall mean giving counsel to, interpreting and handling records associated with, or enrolling or canceling participation of employees of the **Company**.
- B. "**Claim**" shall mean:
 - (1) a written demand for monetary or non-monetary relief made against any **Insured**; or
 - (2) a civil, criminal, administrative or arbitration proceeding brought against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or filing of notice of charges or

similar document, including any fact-finding investigation by the Department of Labor, the Internal Revenue Service, the Pension Benefit Guaranty Corporation, or other similar governmental agency located outside of the United States.

- C. “**Company**” shall mean the **Corporation** and any **Subsidiary**.
- D. “**Corporation**” shall mean the entity named in Item 1 of the Declarations.
- E. “**Costs of Defense**” shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim** including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish such bonds). However, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses accruing to any employee of the **Company**.
- F. “**Employee Benefit Plan**” shall mean:
 - (1) any **Pension Plan** or **Welfare Plan** in existence at the inception date of this Policy or any policy of which this Policy is a renewal; and
 - (2) any other benefit plan not subject to Title I of **ERISA** which is sponsored solely by the **Company** for its employees.
- G. “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974 and any amendments thereto.
- H. “**Insured(s)**” shall mean:
 - (1) the **Company**;
 - (2) any **Employee Benefit Plan**; and
 - (3) any **Insured Person**.
- I. “**Insured Person**” shall mean any natural person who was, now is or shall be a director, officer, partner, trustee or employee of the **Company** or any **Employee Benefit Plan**.
- J. “**Loss**” shall mean damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, settlements, and **Costs of Defense**. **Loss** shall not include taxes, or any matter which may be deemed uninsurable under the law pursuant to which this Policy is construed, criminal or civil fines or penalties, except for the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**, and the twenty percent (20%) or less penalty imposed upon an **Insured** under Section 502(l) of **ERISA**, with respect to covered settlements or judgments. The enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.
- K. “**Mandated Benefit Program**” shall mean any government-mandated insurance program for workers’ compensation, unemployment, social security, or disability benefits for employees of the **Company** including programs governed by the Consolidated Omnibus Budget Reconciliation Act of 1985 and any amendments thereto.
- L. “**Pension Plan**” shall mean any employee pension benefit plan as defined in **ERISA**, with the exception of any multi-employer plans or trusts as defined by **ERISA**, or in any related or similar state, local or foreign law or regulation which provides for benefits or services to employees of the **Company**.

- M.** “**Policy Period**” shall mean the period from the inception date of this Policy to the expiration date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.
- N.** “**Related Wrongful Acts**” shall mean **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- O.** “**Subsidiary**” shall mean any entity in which the **Corporation** owns, directly or indirectly, more than fifty percent (50%) of the voting stock:
- (1) on or before the inception date of this Policy;
 - (2) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** after such date, if the entity’s total assets do not exceed twenty-five percent (25%) of the total consolidated assets of the **Corporation** as of the inception date of this Policy; or
 - (3) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** other than as described in (2) above, if the **Corporation**, within ninety (90) days, provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**.
- P.** “**Welfare Plan**” shall mean any employee welfare benefit plan as defined in **ERISA** or in any related or similar state, local or foreign law or regulation which provides for benefits or services to employees of the **Company**.
- Q.** “**Wrongful Act(s)**” shall mean:
- (1) with respect to an **Employee Benefit Plan**, any actual or alleged violation of any of the responsibilities, obligations, or duties imposed upon fiduciaries of an **Employee Benefit Plan** by **ERISA** or the common law or statutory law of any jurisdiction;
 - (2) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty in the **Administration** of any **Employee Benefit Plan** or **Mandated Benefit Program**; and/or
 - (3) any other matter claimed against any **Insured** solely by reason of their status as a fiduciary of any **Employee Benefit Plan**.

Section IV. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A.** brought about or contributed to by:
- (1) any **Insureds** gaining any profit, advantage or remuneration to which they were not legally entitled;
 - (2) the deliberately fraudulent or criminal acts of any **Insureds**; or
 - (3) the intentional non-compliance with any statute or regulation by an **Insured** or by a person for whose actions the **Insured** is legally responsible.

This exclusion shall only apply if it is finally adjudicated that such conduct in fact occurred. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of any **Insured** shall not be imputed to any other **Insured**;

- B.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation which has been the subject of any notice given or **Claim** reported under any other policy of which this Policy in whole or in part is a direct or indirect renewal or replacement;
- C.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative or investigative proceeding involving any **Insured** as of the date stated in Item 7 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;
- D.** for any actual or alleged:
- (1) bodily injury, sickness, disease, or death of any person;
 - (2) damage to or destruction of any tangible property, including the loss of use thereof; and/or
 - (3) mental anguish, emotional distress, libel or slander;
- E.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission or contamination of any kind;
- F.** for any **Wrongful Act** of any **Employee Benefit Plan**, **Subsidiary**, entity that merges with the **Company**, or **Insured Persons** of such **Employee Benefit Plan**, **Subsidiary** or merged entity occurring:
- (1) prior to the date such plan became an **Employee Benefit Plan** of the **Company**, or prior to the date such entity became a **Subsidiary** or was merged with the **Company**;
 - (2) subsequent to the date such plan became an **Employee Benefit Plan** of the **Company**, or subsequent the date such entity became a **Subsidiary** or was merged with the **Company**, which together with a **Wrongful Act** occurring prior to such date, would constitute **Related Wrongful Acts**; or
 - (3) subsequent to the date the **Corporation** ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such **Subsidiary**;
- G.** which is insured in whole or in part by another valid policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise;
- H.** involving any **Employee Benefit Plan** that was sold, spun-off, merged, or terminated, except for any **Wrongful Act** committed or allegedly committed prior to the date of such sale, spin-off, merger, or termination;
- I.** other than **Costs of Defense**:
- (1) for failure to collect contributions owed to any **Employee Benefit Plan** or **Mandated Benefit Program** or for the return of any assets to any employer if such amounts are or could be chargeable to any **Employee Benefit Plan**, unless such failure or return is due to the negligence of an **Insured**;
 - (2) for benefits paid or payable to a participant or beneficiary of any **Employee Benefit Plan** or **Mandated Benefit Program** if such benefits are paid or may be lawfully paid from the assets of any **Employee Benefit Plan**, unless and to the extent;

- (a) such benefits are payable as a personal obligation of an **Insured Person**, and
 - (b) recovery of the benefits is based upon a covered **Wrongful Act**; or
- (3) arising out of the failure to comply with any law concerning workers' compensation, unemployment insurance, social security, or disability benefits.

Section V. Limit of Liability

- A. The **Insurer's** liability for all **Loss** shall be the amount shown in Item 3 of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period**, regardless of the time of payment or the number of **Claims**.
- B. The **Insurer** shall be liable to pay all **Loss** in excess of the applicable Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- C. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations, and such **Costs of Defense** shall serve to reduce the Limit of Liability.

Section VI. Retention

- A. One Retention shall apply to each and every **Claim**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention. The Retention shall apply to **Costs of Defense** incurred by the **Insured** with the **Insurer's** written consent and all other **Loss** except:
 - (1) **Costs of Defense** incurred by the **Insurer**; or
 - (2) **Loss** incurred by an **Insured Person** if the **Company** or any **Employee Benefit Plan**:
 - (a) is not legally permitted to indemnify that **Insured Person**; or
 - (b) is legally permitted to indemnify but does not do so solely due to:
 - (i) the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**; or
 - (ii) the **Company** becoming a debtor in possession.
- B. For the purposes of applying the Retention, the certificate of incorporation, charter or other organizational documents of the **Company**, together with all by-laws and resolutions, shall be deemed to require indemnification by the **Company** or **Employee Benefit Plan** to the fullest extent permitted by law.
- C. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been 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 coverage, in whole or in part, for such **Claim**.

Section VII. Defense and Settlements

- A. The **Insureds** shall at all times have the right to associate with the **Insurer** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply.
- B. The **Insurer** has the right to settle any **Claim**. In the event the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer** shall be released from any obligation to further defend such **Claim**. Subject to the Limit of Liability, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention which the **Insurer** would have contributed to the settlement had the **Insured** consented to settlement, plus **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle.
- C. The **Insureds** have the right to assume the defense of any **Claim** against them. The **Corporation** shall exercise this option in writing on behalf of all **Insureds** within thirty (30) days of the reporting of the **Claim** to the **Insurer**. If this option is exercised, the **Insurer** shall not re-assume the defense of the **Claim**. The **Insurer** shall at all times have the right to associate with the **Insured** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply.
- D. The **Insureds** shall not retain counsel, incur **Costs of Defense**, admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the **Insurer's** consent shall not be covered.
- E. In the event the **Insured** assumes the defense of any **Claim**, the **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:
- (1) the appropriate Retention has been satisfied;
 - (2) any amounts advanced by the **Insurer** shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid;
 - (3) the **Insureds** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds**; and
 - (4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Loss**, the **Insureds** will repay the **Insurer** upon demand all **Costs of Defense** advanced.

Section VIII. Notice of Claim

- A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period**. Such notice shall be given as soon as practicable, but in no event later than ninety (90) days after the end of the **Policy Period**.
- B. If, during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of:
- (1) the specific **Wrongful Act**;
 - (2) the injury or damage which has or may result therefrom; and
 - (3) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

- C. In addition to furnishing notice as provided in Sections VIII.A. or B. the **Insureds** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.
- D. Notice to the **Insurer** as provided in Sections VIII.A. or B. shall be given to:

**GREAT AMERICAN INSURANCE COMPANIES
EXECUTIVE LIABILITY DIVISION
CLAIMS DEPARTMENT
P.O. BOX 66943
CHICAGO, IL 60666.**

Section IX. General Conditions

A. Cancellation or Non-Renewal

- (1) This Policy may be canceled by the **Corporation** at any time by providing written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.E. wherein the entire premium for this Policy shall be deemed earned.
- (2) This Policy may only be canceled by the **Insurer** if the **Corporation** does not pay the premium when due.
- (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** with no less than sixty (60) days advance notice thereof.

B. Proposal Forms

The particulars and statements contained in the Proposal Forms and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Insureds** that the statements in the Proposal Forms or in any information provided therewith are their representations, they are material, and this Policy is issued in reliance upon the truth of such representations; provided, however, that except for material facts or circumstances known to the person(s) who signed the Proposal Forms, any misstatement or omission in such Proposal Forms or information provided therewith in respect of a specific **Wrongful Act** by a particular **Insured** or his cognizance of any matter which he has reason to suppose might afford grounds for a future **Claim** against him shall not be imputed to any other **Insured** for purposes of determining the validity of this Policy as to such other **Insured**.

C. Action Against the Insurer

- (1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay has been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- (2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insureds** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such action.

D. Conversion to Run-Off Coverage

If, during the **Policy Period**:

- (1) another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation**, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity, this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction. This Policy shall be excess to any other insurance available, and the entire premium for this Policy shall be deemed earned as of the date of such transaction; or
- (2) the **Insured's** responsibilities for the **Administration** of, or as a fiduciary of, any **Employee Benefit Plan** are assumed by another person or entity, then, as respects such an **Insured**, this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such assumption of responsibilities, and this Policy shall be excess to any other insurance available.

The **Corporation** must give written notice of such transaction or change in responsibilities to the **Insurer** within ninety (90) days after the effective date of such transaction or change in responsibilities and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary.

E. Coverage Extensions

- (1) Created, Acquired or Merged Plans
Any **Employee Benefit Plan** (other than an Employee Stock Ownership Plan as defined in **ERISA**, or in any related or similar state, local or foreign law or regulation) which, subsequent to the effective date of this Policy, is created or acquired by the **Company**, or merged with any **Employee Benefit Plan** which was afforded coverage under this Policy prior to such merger shall be included as an **Insured** as of the date of creation, acquisition or merger unless the created, acquired, or merged **Employee Benefit Plan** is a **Pension Plan** whose assets exceed ten percent (10%) of the assets of all **Pension Plans** of the **Company** as of the inception date of the Policy. In that event, if written notice thereof is given to the **Insurer** within ninety (90) days of such creation, acquisition, or merger, and the **Insured** agrees to any premium adjustments and/or coverage revision as may be required by the **Insurer**, then such **Pension Plan** shall be included as an **Insured** as of the date of creation, acquisition or merger. In any event, coverage shall only be afforded for **Wrongful Acts** actually or allegedly taking place after the date of such creation, acquisition or merger unless the **Insurer** agrees by written endorsement to provide coverage for **Wrongful Acts** actually or allegedly taking place at an earlier date.
- (2) Spousal Provision
The coverage provided by this Policy shall also apply to the lawful spouse of an **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.
- (3) Worldwide Provision
The coverage provided under this Policy shall apply worldwide.
- (4) Estates and Legal Representatives
The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

F. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**. Furthermore, if the premium for this Policy is paid for by an **Employee Benefit Plan**, the **Insurer** may seek recourse against a fiduciary in the case of a breach of fiduciary duty.

G. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** unless its consent is endorsed hereon.

H. Conformity to Statute

Any terms of this Policy in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

I. Entire Agreement

This Policy (including the Declarations, Proposal Forms submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

J. Corporation Represents Insured

By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

K. Representative of the Insurer

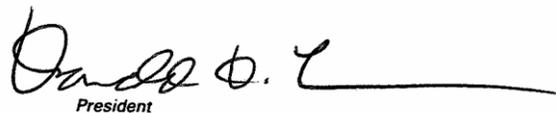
Great American Insurance Companies, Executive Liability Division, P.O. Box 66943, Chicago, Illinois 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VIII. of the Policy.

SPECIMEN

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

GREAT AMERICAN E&S INSURANCE COMPANY


Secretary


President