

# Fiduciary Liability Excess Policy



## STEADFAST INSURANCE COMPANY

Dover, Delaware  
Administrative Office - 1400 American Lane  
Schaumburg, Illinois 60196-1056

**Policy Number:**

**Item 1. Parent Company and address:**

**Item 2. Limit of Liability:** \$  
Note that the Limit of Liability is reduced or exhausted by Defense Costs.

**Item 3. Underlying Insurance:**

(A) **Primary Policy:**

Insurer:  
Policy Number:  
Limit of Liability:

(B) **Other Policy(ies):**

Insurer:  
Policy Number:  
Limit of Liability:

**Item 4. Policy Period:** From 12:01 A.M. on  
To 12:01 A.M. on  
Local time at the address shown in Item 1.

**Item 5. Endorsement(s) Effective at Inception:**

**THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS. THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD. PLEASE READ CAREFULLY**

In witness whereof, the Underwriter issuing this policy has caused this policy to be signed by its authorized officers, but it shall not be valid unless also signed by the duly authorized representative of the Underwriter.

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

President

Corporate Secretary

# Fiduciary Liability Excess Policy

## Claims Made Coverage



In consideration of payment of the premium and in reliance upon all statements made and information furnished to the Steadfast Insurance Company ( herein called the Underwriter ) and to the Insurers of the **Underlying Insurance**, including the statements made in the application and its attachments and any material submitted therewith, all of which are made a part hereof, and subject to the Declarations and the limitations, conditions, provisions, and other terms of this policy (including any endorsements hereto), the Underwriter, the **Parent Company** and the **Insureds** agree as follows:

### I. INSURING CLAUSE

The Underwriter shall provide the **Insureds** with insurance coverage during the **Policy Period** excess of the **Underlying Insurance**. Coverage under this policy shall attach only after all of the Limit(s) of Liability of **Underlying Insurance** has been exhausted by the actual payment of loss(es). Except as otherwise provided herein, coverage under this policy shall then apply in conformance with and subject to the warranties, limitations, conditions, provisions, and other terms of the **Primary Policy** as in effect the first day of the **Policy Period**, together with the warranties and limitations of any other **Underlying Insurance**. In no event shall coverage under this policy be broader than coverage under any **Underlying Insurance**.

### II. DEFINITIONS

When used in this policy:

- A. **Insured**, either in the singular or plural, means those persons, organizations or benefit programs designated as insureds under the **Primary Policy**.
- B. **Parent Company** means the organization designated in Item 1 of the Declarations of this policy.
- C. **Policy Period** means the period of time specified in Item 4 of the Declarations of this policy, subject to prior termination in accordance with Subsection III.H. of this policy. If this period is less than or greater than one year, the Limit of Liability specified in Item 2 of the Declarations of this policy shall be the Underwriter's maximum limit of liability under this policy for the entire period.
- D. **Primary Policy** means the policy designated in Item 3(A) of the Declarations of this policy.
- E. **Underlying Insurance** means all of those policy(ies) designated in Item 3 of the Declarations of this policy.

### III. GENERAL CONDITIONS AND LIMITATIONS

#### A. MAINTENANCE OF UNDERLYING INSURANCE

The Limit(s) of Liability of the **Underlying Insurance** scheduled in Item 3 of the Declarations of this policy shall be maintained during the **Policy Period** in full effect with solvent insurers except for any reduction or exhaustion of the aggregate Limit(s) of Liability available under the **Underlying Insurance** solely by reason of actual payment of loss(es) thereunder. Failure to comply with the foregoing shall not invalidate this policy but the Underwriter shall not be liable to a greater extent than if this condition had been complied with. To the extent that any **Underlying Insurance** is not so maintained, then the **Insureds** shall be deemed to be self-insured for the amount of the Limit(s) of Liability of any such **Underlying Insurance**.

In the event of a change to any **Underlying Insurance** by rewrite, endorsement or otherwise, coverage under this policy shall become subject to such change only if and to the extent the Underwriter's consent to such change is endorsed in writing to this policy. If such consent is not endorsed in writing on to this policy, the Underwriter shall not be liable to a greater extent than it would have been in the absence of such change to the **Underlying Insurance**.

## B. REDUCTION/EXHAUSTION OF UNDERLYING LIMITS

In the event and only in the event of the reduction or exhaustion of the Limit(s) of Liability of the **Underlying Insurance** solely as the result of actual payment of loss covered thereunder, this policy shall: (i) in the event of reduction, pay excess of the reduced Limit(s) of Liability of the **Underlying Insurance**, and (ii) in the event of exhaustion, continue in force as primary insurance excess of the retention applicable in the **Primary Policy**, which retention shall be applied to any subsequent loss as specified in the **Primary Policy**.

Notwithstanding any of the terms of this policy which might be construed otherwise, this policy shall drop down only in the event of reduction or exhaustion of the **Underlying Insurance** by the actual payment of loss and shall not drop down for any other reason including, but not limited to, uncollectibility (in whole or in part) of any **Underlying Insurance**. The risk of uncollectibility of such **Underlying Insurance** (in whole or in part) whether because of financial impairment or insolvency of the underlying insurer or for any other reason, is expressly retained by the **Insureds** and is not in any way or under any circumstances insured or assumed by the Underwriter.

## C. LIMIT OF LIABILITY

The amount set forth in Item 2 of the Declarations is the maximum aggregate Liability of the Underwriter under this policy with respect to all claims first made during the **Policy Period** against all **Insureds** irrespective of the time of payment by the Underwriter. Defense Costs are part of and not in addition to the Limit of Liability and the payment by the Underwriter of Defense Costs reduces such Limit of Liability.

## D. INVESTIGATION AND SETTLEMENT

The Underwriter may, at its sole discretion, elect to participate in the investigation, settlement or defense of any claim against any of the **Insureds** for matters covered by this policy even if the **Underlying Insurance** has not been exhausted and the **Insureds** shall give the Underwriter such information and cooperation as it may reasonably require.

## E. SUBROGATION

In that this policy is "Excess Coverage," the **Insureds'** right of recovery against any person or entity may not be exclusively subrogated to the Underwriter. Therefore, in the event of any payment under this policy, the Underwriter will act in concert with all other interests (including the **Insureds'**) concerned in the exercise of such rights of recovery. The apportioning of amounts which may be so recovered shall follow the principle that any interests (including the **Insureds'**) that shall have paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by them; the Underwriter is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly the interests (including the **Insureds'**) of which this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests (including the **Insureds'**) concerned, in the ratio of their respective recoveries as finally settled.

## F. NOTICE

The **Insureds** shall, as a condition precedent to exercising their rights under this policy, give to the Underwriter written notice of any claim or any situation that could give rise to a claim under this policy or any **Underlying Insurance** in the same manner required by the terms and conditions of the **Primary Policy**.

The Underwriter shall be given notice in writing as soon as practicable in the event of (a) the termination of any **Underlying Insurance**, (b) any additional or return premiums charged or allowed in connection with any **Underlying Insurance**, or (c) any change to the **Underlying Insurance** by rewrite, endorsement or otherwise. Written notice to the Underwriter shall be given to Steadfast Insurance Company, C/O Zurich-American Brokerage, Inc., One Liberty Plaza, 30th Floor, New York, New York 10006, Attention: Fiduciary Liability Claims.

## G. ALTERATION

No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to this policy which is signed by an authorized representative of the Underwriter.

## H. POLICY TERMINATION

This policy shall terminate at the earliest of the following times:

1. the effective date of termination specified in written prior notice by the **Parent Company** to the Underwriter,
2. sixty (60) days after receipt by the **Parent Company** of a written notice of termination from the Underwriter.

3. upon expiration of the **Policy Period** as set forth in Item 4 of the Declarations,
4. ten (10) days after receipt by the **Parent Company** of a written notice of termination from the Underwriter for failure to pay a premium when due,
5. at such time as may be agreed upon by the Underwriter and the **Parent Company**.

The Underwriter shall refund the unearned premium computed at customary short rates if the policy is terminated by the **Parent Company**. Under any other circumstances the refund shall be computed pro rata.

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