



Fiduciary Liability Policy

Declarations

Insurance is provided by the following Company:

Zurich American Insurance Company

Policy Number:

Item 1. Parent Company and address:

Item 2. Limits of Liability: (A) Each **Loss** \$
(B) Each **Policy Period** \$

Note that the Limits of Liability and any Deductible are reduced or exhausted by **Defense Costs**.

Item 3. **Policy Period:** From 12:01 A.M. on
To 12:01 A.M. on
Local time at the address shown in Item 1.

Item 4. Deductible Amounts: (A) Non-Indemnifiable **Loss** \$
(B) Indemnifiable **Loss** \$

Item 5. Insured **Pension Benefit Plans:**

Item 6. Pending of Prior Date:

Item 7. Extended Reporting Period: (A) Additional Premium:
(B) Additional Period:

Item 8. Continuity Date:

Item 9. Endorsements Effective at Inception:

THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS AND COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED PERSONS DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF EXERCISED. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS. 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.

ZURICH AMERICAN INSURANCE COMPANY

Authorized Representative

Date

President

Corporate Secretary

TABLE OF CONTENTS

	<u>Page</u>
I. INSURING CLAUSE	3
II. EXTENSIONS.....	3
A. Estates and Legal Representatives	3
B. Extended Reporting Period.....	3
III. DEFINITIONS	3
IV. EXCLUSIONS.....	5
V. GENERAL CONDITIONS AND LIMITATIONS	5
A. Limit of Liability and Deductible	5
B. Reporting and Notice.....	6
C. Defense and Settlement.....	6
D. Other Insurance.....	7
E. Changes in Exposure.....	7
F. Representations and Severability.....	8
G. Territory and Valuation	8
H. Policy Termination	8
I. Subrogation.....	8
J. Action Against the Underwriter.....	9
K. Authorization Clause	9
L. Alteration and Assignment.....	9

Fiduciary Liability Policy

Claims Made Coverage



In consideration of payment of the premium and in reliance upon the statements made in the application and its attachments and any materials 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), Zurich American Insurance Company (herein called the Underwriter) and the **Insureds** agree as follows:

I. INSURING CLAUSE

The Underwriter shall pay on behalf of each of the **Insureds** all **Loss** for which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against the **Insured** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** taking place before or during the **Policy Period** by an **Insured** or by any person for whose **Wrongful Acts** the **Insured** is legally responsible.

II. EXTENSIONS

A. ESTATES AND LEGAL REPRESENTATIVES

This policy shall afford coverage for **Claims** for the **Wrongful Acts** of **Insured Persons** made against the estates, heirs, legal representatives or assigns of **Insured Persons** who are deceased or against the legal representatives or assigns of **Insured Persons** who are incompetent, insolvent or bankrupt to the extent that in the absence of such death, incompetence, insolvency or bankruptcy, such **Claims** would have been covered by this policy.

B. EXTENDED REPORTING PERIOD

If the Underwriter terminates or refuses to renew this policy other than for nonpayment of premium, the **Insureds** shall have the right, upon payment of the additional premium set forth in Item 7(A) of the Declarations, to an extension of the coverage granted by this policy for the period set forth in Item 7(B) of the Declarations (Extended Reporting Period) following the effective date of termination or nonrenewal, but only with respect to any **Wrongful Act** taking place prior to the effective date of such termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Underwriter within fifteen (15) days following the effective date of termination or nonrenewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**.

If the **Parent Company** terminates or declines to accept renewal of this policy, the Underwriter may, if requested, at its sole option, grant an Extended Reporting Period.

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

III. DEFINITIONS

When used in this policy:

A. **Administration** means giving advice or notice to employees or effecting enrollment, termination or cancellation of employees under a **Benefit Program**.

B. **Benefit Program** means:

1. any **Pension Benefit Plan** specifically designated in Item 5 of the Declarations,
2. any **Employee Welfare Benefit Plan** sponsored by the **Company** which existed at the inception date of this policy or of any policy of which this policy is a renewal,
3. any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**, or
4. any **Pension Benefit Plan** or **Employee Welfare Benefit Plan** created or acquired by the **Company** during the **Policy Period**, subject to the provisions of Section V.E.1 of this policy;

provided, however, **Benefit Program** shall not include any multiemployer plan, as defined in the Employee Retirement Income Security Act of 1974, as amended.

- C. **Claim** means:
1. a civil proceeding commenced by the service of a complaint or similar pleading,
 2. a criminal proceeding commenced by a return of an indictment, or
 3. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,
- against any **Insured** for a **Wrongful Act**, including any appeal therefrom.
- D. **Company** means, collectively, the **Parent Company** and its **Subsidiaries**.
- E. **Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Insured**) incurred in defending or investigating **Claims** and the premium for appeal, attachment or similar bonds.
- F. **Employee Welfare Benefit Plan** means any plan so defined in the Employee Retirement Income Security Act of 1974, as amended.
- G. **Financial Impairment** means the status of the **Company** resulting from:
1. the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or
 2. the **Company** becoming a debtor in possession.
- H. **Insured**, either in the singular or plural, means any one or more of the following:
1. the **Company**,
 2. the **Benefit Programs**, or
 3. the **Insured Persons**.
- I. **Insured Persons**, either in the singular or plural, means any natural persons serving as a past, present or future trustee, director, officer or employee of the **Company** or of any **Benefit Program**.
- J. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- K. **Loss** means the total amount which any **Insured** becomes legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, and **Defense Costs**. **Loss** does not include matters uninsurable under the law pursuant to which this policy is construed.
- L. **Parent Company** means the organization designated in Item 1 of the Declarations.
- M. **Pension Benefit Plan** means any plan so defined in the Employee Retirement Income Security Act of 1974, as amended.
- N. **Policy Period** means the period of time specified in Item 3 of the Declarations, subject to prior termination in accordance with Subsection V.H. of this policy. If this period is less than or greater than one year, then the Limits of Liability specified in Item 2 of the Declarations shall be the Underwriter's maximum limit of liability under this policy for the entire period.
- O. **Subsidiary**, either in the singular or plural, means any organization in which more than 50% of the outstanding voting securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by one or more **Companies**.
- P. **Wrongful Act** means:
1. any breach of the responsibilities, obligations or duties by an **Insured** which are imposed upon a fiduciary of a **Benefit Program** by the Employee Retirement Income Security Act of 1974, as amended, or by the common or statutory law of the United States, or other jurisdiction anywhere in the world;
 2. any other matter claimed against an **Insured** solely because of such **Insured's** service as a fiduciary of any **Benefit Program**; or
 3. any negligent act, error or omission in the **Administration** of any **Benefit Program**.

IV. EXCLUSIONS

The Underwriter shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:

- A. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this policy is a renewal or replacement;
- B. for any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed by such **Insured**, if a judgment or other final adjudication adverse to such **Insured** establishes such a deliberately fraudulent act or omission or willful violation;
- C. for libel or slander;
- D. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof;
- E. based upon, arising out of, or attributable to liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Benefit Program** was established;
- F. based upon, arising out of, or in consequence of the failure of the **Insured** to comply with any law governing workers' compensation, unemployment, social security or disability benefits or any similar law, except the Consolidated Omnibus Budget Reconciliation Act of 1985 and amendments thereto;
- G. based upon, arising out of, or attributable to any demand, suit or proceeding pending, or order, decree or judgment entered against any **Insured** on or prior to the Pending or Prior Date set forth in Item 6 of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein; or
- H. based upon, arising out of, or attributable to such **Insured** having gained in fact any personal profit, remuneration or advantage to which such **Insured** was not legally entitled.

The Underwriter shall not be liable for that part of **Loss**, other than **Defense Costs**:

- A. which constitutes punitive or exemplary damages, fines, penalties, taxes or the multiple portion of any multiplied damage award, other than the five percent or less, or the twenty percent or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502 (i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;
- B. which is based upon, arising out of, or attributable to the failure to collect from employers contributions owed to a **Benefit Program**, unless the failure is because of the negligence of an **Insured**;
- C. which constitutes benefits due or to become due under the terms of a **Benefit Program** unless, and to the extent that, (1) the **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation, and (2) recovery for the benefits is based upon a covered **Wrongful Act**; or
- D. which constitutes the return or reversion to any employer of any contribution or asset of a **Benefit Program**, provided this exclusion shall apply only to the **Insured** which actually received such return or reversion.

No fact pertaining to or knowledge possessed by any **Insured** shall be imputed to any other **Insured** for purposes of applying the exclusions set forth in Section IV.

V. GENERAL CONDITIONS AND LIMITATIONS

A. LIMIT OF LIABILITY AND DEDUCTIBLE

For purposes of this policy, all **Loss** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of any **Insured** shall be deemed one **Loss**, and such **Loss** shall be deemed to have originated in the earliest **Policy Period** in which a **Claim** is first made against any **Insured** alleging any such **Wrongful Act** or **Interrelated Wrongful Acts**.

The Underwriter's maximum liability for each **Loss** shall be the Limit of Liability for each **Loss** set forth in Item 2(A) of the Declarations. The Underwriter's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the same **Policy Period** shall be the Limit of Liability for each **Policy Period** set forth in Item 2(B) of the Declarations.

The Underwriter's liability hereunder shall apply only to that part of each **Loss** which is excess of the Deductible Amounts set forth in Item 4 of the Declarations and such Deductible Amounts shall be borne by the **Insureds** uninsured and at their own risk.

The Deductible Amount for Non-Indemnifiable **Loss** set forth in Item 4(A) of the Declarations shall apply to **Loss** incurred by any **Insured Person** for which the **Company** is not permitted or required to indemnify or is permitted or required to indemnify but does not do so by reason of **Financial Impairment**. The Deductible Amount for Indemnifiable **Loss** set forth in Item 4(B) of the Declarations shall apply to all other **Loss**. For purposes of this Subsection V.A., the shareholder and board of director resolutions of the **Company** shall be deemed to provide indemnification for **Loss** to the fullest extent permitted by law.

If a part of a single **Loss** is subject to the Deductible Amount for Non-Indemnifiable **Loss** and part of the same **Loss** is subject to the Deductible Amount for Indemnifiable **Loss**, the maximum Deductible Amount applicable to such **Loss** shall be the Deductible Amount for Indemnifiable **Loss**.

For purposes of this Subsection V.A. only, the Extended Reporting Period, if exercised, shall be part of and not in addition to the immediately preceding **Policy Period**.

B. REPORTING AND NOTICE

The **Insureds** shall, as a condition precedent to exercising their rights under this policy, give to the Underwriter written notice of any **Claim** made against the **Insureds** as soon as practicable but in no event later than ninety (90) days after expiration of the **Policy Period**, or if exercised, the Extended Reporting Period.

If during the **Policy Period** or Extended Reporting Period (if exercised) the **Insureds** become aware of circumstances which could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Underwriter during the **Policy Period** or Extended Reporting Period (if exercised), then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period** or the Extended Reporting Period in which the circumstances were first reported to the Underwriter.

The **Insureds** shall, as a condition precedent to exercising their rights under this policy,

1. include with any notice of **Claim** or circumstance a description of the **Claim** or circumstance, the nature of the alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insured** first became aware of the **Claim** or circumstance, and
2. give to the Underwriter such information and cooperation as it may reasonably require.

All notices under any provision of this policy shall be in writing and given by prepaid express courier, certified mail or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address as shown in Item 1 of the Declarations. Notice to the Underwriter of any **Claim** or circumstance shall be given to Zurich American Insurance Company, One Liberty Plaza, 30th Floor, New York, New York 10006, fax (212) 566-4002 Attention: Executive Assurance Department - Claims. All other notices to the Underwriter under this policy shall be given to the same addressee but to the attention of the Executive Assurance Department. Notice given as described above shall be deemed received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

C. DEFENSE AND SETTLEMENT

The Underwriter shall have the right and duty to defend any **Claim** covered by this policy or may, at its option, give its written consent to the defense of any claim by an **Insured**. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Underwriter's duty to defend shall cease upon exhaustion of the Underwriter's applicable Limit of Liability set forth in Item 2 of the Declarations.

The **Insureds** agree not to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Underwriter's written consent, which shall not be unreasonably withheld. The Underwriter shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented.

The **Insureds** agree to provide the Underwriter with all information, assistance and cooperation which the Underwriter reasonably requests and agree that in the event of a **Claim** the **Insureds** will do nothing that may prejudice the Underwriter's position or its potential or actual rights of recovery.

The Underwriter may make any investigation it deems necessary and may, with the written consent of the **Insureds**, which consent shall not be unreasonably withheld, make any settlement of a **Claim** it deems expedient.

Defense Costs incurred by the Underwriter, or by the **Insured** with the written consent of the Underwriter, are part of and not in addition to the Underwriter's applicable Limit of Liability set forth in Item 2 of the Declarations and the payment by the Underwriter of **Defense Costs** reduces such applicable Limit of Liability.

D. OTHER INSURANCE

If any **Loss** arising from any **Claim** made against any **Insured** is insured under any other valid policy(ies), prior or current, then this policy shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this policy.

E. CHANGES IN EXPOSURE

1. Acquisition or Creation of Another Organization or **Benefit Program**

If before or during the **Policy Period** the **Company**:

- a) acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**, or
- b) creates or acquires a **Benefit Program** or otherwise becomes a fiduciary of or responsible for the **Administration** of any **Benefit Program**

coverage shall be afforded, subject to the terms and conditions of this policy, for such **Subsidiary** and/or **Benefit Program** and any **Insured Persons** of such **Subsidiary** and/or **Benefit Program** but only with respect to **Wrongful Acts** taking place after such acquisition or creation unless the Underwriter agrees after presentation of a complete application and all appropriate information, to provide coverage by endorsement for **Wrongful Acts** by such **Insured** taking place prior to such acquisition or creation.

Notwithstanding the foregoing, if such created or acquired **Benefit Program** is a **Pension Benefit Plan** created or acquired during the **Policy Period**, no coverage shall be afforded to such **Pension Benefit Plan** and its **Insured Persons** pursuant to this Subsection V.E.1. unless (i) the **Parent Company** gives written notice of such creation or acquisition to the Underwriter within ninety (90) days together with such information as the Underwriter may require, (ii) the **Company** pays any reasonable additional premium required by the Underwriter, and (iii) the Underwriter adds, by endorsement, the name of the **Pension Benefit Plan** to Item 5 of the Declarations. No coverage pursuant to this Subsection V.E.1. shall be afforded to any **Pension Benefit Plan** and its **Insured Persons** which was created or acquired before the **Policy Period** unless such **Pension Benefit Plan** is included in Item 5 of the Declarations.

Notwithstanding the foregoing, no coverage shall be afforded pursuant to this Subsection V.E.1. to any employee stock ownership plan, any **Company** sponsoring such plan or any **Insured Persons** with respect to such plan unless and until the name of such plan is included in Item 5 of the Declarations by the Underwriter.

Any coverage afforded by this Subsection V.E.1. shall be specifically excess of the amount of payment from any other insurance available to such **Insureds**.

2. Acquisition by another organization of the **Company** or **Benefit Program**

If :

- a) during the **Policy Period** the **Company** merges into or consolidates with another organization,
- b) during the **Policy Period** another organization or person or group of organizations and/or persons acting in concert acquires voting securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for election of directors of the **Company**, or
- c) before or during the **Policy Period** the responsibilities of the **Company** for the **Administration** of, or as a fiduciary of, any **Benefit Program** are fully assumed by any other person and/or entity,

coverage under this policy shall continue until termination of this policy, but only with respect to **Claims** for **Wrongful Acts** by an **Insured** taking place prior to such merger, consolidation, acquisition or assumption of responsibilities. The **Parent Company** shall give written notice of such merger, consolidation, acquisition or assumption of responsibilities that occurs during the **Policy Period** to the Underwriter as soon as practicable together with such information as the

Underwriter may require. Any such continuing coverage shall be specifically excess of the amount of payment from any other insurance available to such **Insureds**.

3. Termination of **Benefit Program**

If before or during the **Policy Period** the **Company** terminates any **Benefit Program**, coverage with respect to such terminated **Benefit Program** shall continue until termination of this policy for those who were **Insureds** at the time of such **Benefit Program** termination, or who would have been **Insureds** at the time of such termination had this policy been in effect, with respect to **Wrongful Acts** by such **Insureds** taking place prior to or after the effective date of such **Benefit Program** termination.

F. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this policy, the Underwriter has relied upon the declarations, representations and warranties in the written application for this policy and, if applicable, upon any declarations, representations and warranties in the original written application submitted to another insurer in respect of the prior coverage incepting as of the Continuity Date set forth in Item 8 of the Declarations. All such declarations, representations and warranties are the basis of coverage under this policy and shall be considered as incorporated in and constituting part of this policy.

Such written application(s) for coverage shall be construed as a separate application for coverage by each of the **Insured Persons**. No statement in the application or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** or any **Benefit Program** for the purpose of determining if coverage is available. The statements in the application made by and knowledge possessed by the person(s) signing the application shall be imputed to the **Company** for the purpose of determining if coverage is available to the **Company**.

G. TERRITORY AND VALUATION

All premiums, limits, deductibles, **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 rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Coverage under this policy shall extend anywhere in the world.

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 days (60) 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 3 of the Declarations;
4. ten days (10) after receipt by the **Parent Company** of a written notice of termination from the Underwriter for failure to pay a premium when due; or
5. at such other 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 this policy is terminated by the **Parent Company**. Under any other circumstance the refund shall be computed pro rata.

I. SUBROGATION

In the event of any payment under this policy, the Underwriter shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, and the **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Underwriter to bring suit in the name of the **Insureds**.

J. ACTION AGAINST THE UNDERWRITER

No action shall lie against the Underwriter unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy. No person or organization shall have any right under this policy to join the Underwriter as a party to any action against the **Insured** to determine the **Insured's** liability nor shall the Underwriter be impleaded by the **Insured**

or their legal representatives. Bankruptcy or insolvency of an **Insured** or of the estate of any **Insured Person** shall not relieve the Underwriter of its obligations nor deprive the Underwriter of its rights or defenses under this policy.

K. AUTHORIZATION CLAUSE

By acceptance of this policy, the **Parent Company** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of notice of **Claims** or termination, the payment of premiums and the receiving of any return premiums that may become due under this policy, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this policy (except the giving of notice to apply for the Extended Reporting Period) and the **Insureds** agree that the **Parent Company** shall act on their behalf.

L. ALTERATION AND ASSIGNMENT

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.

SPECIMEN