



Illinois Union Insurance Company
 Westchester Surplus Lines Insurance Company

Advertising Agency Liability Policy

(Defense Costs in Addition to the
Limits of Liability)

SPECIMEN

DEFENSE COSTS AND LOSS SHALL BE APPLIED AGAINST THE RETENTION. THE LIMITS OF LIABILITY OF THIS POLICY ARE NOT REDUCED OR EXHAUSTED BY PAYMENT OF DEFENSE COSTS. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS AND RESPONSIBILITIES.

Some words and phrases that appear in boldface have special meanings. Refer to Section II. — DEFINITIONS of this policy.

In reliance upon the representations in the insurance application, and in consideration of the premium paid when due and subject to the Limits of Liability stated in the Declarations of this policy and the policy's terms, exclusions and conditions, the **Company** and the **insured** agree to the following:

I. INSURING AGREEMENTS

A. Advertising and Personal Injury Liability

The **Company** shall pay on behalf of the **insured** all **loss** in excess of the Retention and within the Limits of Liability which the **insured** is legally obligated to pay third parties because of liability imposed by law or **assumed under contract** as a result of **claims** arising from an **occurrence** committed by the **insured** during the **policy period** and arising from:

1. defamation, however styled in a **claim**, involving disparagement or harm to the character, feelings or reputation of any person or organization, including libel, slander, product disparagement or trade libel;
2. invasion of or interference with the right of privacy or publicity, however styled in a **claim**, including intrusion upon seclusion, false light, invasion of privacy, public disclosure of private facts and misappropriation of name or likeness;
3. negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
4. false arrest, detention or imprisonment, or malicious prosecution;
5. trespass, wrongful entry or eviction;
6. infringement of copyright, plagiarism, **piracy** and misappropriation of ideas under implied contract;
7. infringement or dilution of trademark, **title** slogan, trade name, trade dress, service mark or service name;
8. **unfair competition** and claims under Section 43(a) of the Lanham Act or similar state statutes, but only when alleged in a claim covered under clauses 1, 6 and 7 above; or
9. negligent supervision of an employee, but only when alleged in a claim covered under clauses 1-7 above.

B. Contextual Errors and Omissions Liability

The **Company** shall pay on behalf of the **insured** all **loss** in excess of the Retention and within the Limits of Liability which the **insured** is legally obligated to pay third parties because of liability imposed by law or **assumed under contract** as a result of **claims** arising from an **occurrence** committed by the **insured** during the **policy period** and arising from any form of negligence, in the content of **matter for advertising**, including but not limited to an error, omission, misrepresentation, misstatement or misleading statement.

C. Defense of **Claims**

The **Company** shall pay on behalf of the **insured** all **defense costs**, subject to Section **IV. — LIMITS OF LIABILITY AND RETENTION**, as a result of a **claim** covered by this policy.

II. DEFINITIONS

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When used in boldface in this policy including endorsements and the Declarations:

A. **Additional insured** means:

1. an individual or entity providing **matter** or services for or on behalf of the **Named Insured** for **advertising** and who has been added to this policy by endorsement as an **insured**; or
2. an individual or entity added to this policy by endorsement as an **insured** in respect to **advertising** furnished by the **Named Insured** to the **additional insured**.

B. Advertising means **advertising** publicity, press releases or promotion of the **insured's** services or products and of the services and products of others, but this definition does not include redemption of lotteries, sweepstakes, contests or games of chance, including the over or under redemption of any of the above.

C. Advertising professional services mean services rendered or which should have been rendered in the development, maintenance and placement of **advertising**. Such services do not include telemarketing nor the production of films, videos or publications for release to the public that are independent from the **advertising** for clients.

D. Assumed under contract means legal liability validly assumed by the **insured** in any written, oral or implied hold harmless or indemnity agreement with any party, but only with respect to **matter** provided by the **insured** and for the types of **occurrences** covered by this policy.

E. Bodily injury means bodily injury, sickness, disease, including death.

F. Claim means a demand or suit for money or services against the **insured** for **loss** or injunctive relief, related to a covered **occurrence**, even if any of the allegations are groundless, false or fraudulent, or a request to toll or waive any applicable statute of limitations relating to a **claim** or potential **claim**.

G. Company means the insurance **Company** shown in the Declarations.

H. Defense costs means the following, when authorized and approved by the **Company**:

1. reasonable and necessary fees to respond to a demand for a retraction or correction;
2. reasonable and necessary fees, costs and expenses incurred by outside counsel arising from the investigation, defense, settlement or appeal of a **claim**; and
3. premiums on appeal bonds or on bonds to release attachments as a result of a covered **claim** for a bond amount not exceeding the Limits of Liability, but the **Company** is not responsible for procuring such bonds.

Defense costs does not include salaries, expenses or office overhead of any **insured**.

I. ERISA means the Employee Retirement Income Security Act of 1974, as amended, any similar state or local common or statutory law and any rules and regulations promulgated thereunder.

J. Independent contractor means an individual, corporation or partnership entity, who has contracted with the **Named Insured** in writing to provide **matter** or services relating thereto.

K. Insured means:

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1. the **Named Insured** and any **subsidiary**;
2. any person who was, is or becomes a partner, principal, officer, director, member or employee of the **Named Insured** or any **subsidiary**, but only in respect to **claims** arising solely out of the course and scope of their duties as such;
3. any temporary or leased personnel of the **Named Insured**, but only while acting under the direct supervision and on behalf of the **Named Insured**;
4. the estate, heirs, executors, administrators and legal representatives of an **insured** in the event of the **insured's** death, disability, incapacity, insolvency or bankruptcy, but only to the extent such **insured** would have otherwise been provided coverage under this policy.

L. Loss means judgments, settlements and all forms of monetary damages (including punitive or exemplary damages if insurable under applicable law) as a result of a **claim** covered by this policy, which shall also include plaintiff's attorneys' fees and costs as part of a judgment, pre-judgment and post-judgment interest. However, **loss** does not include:

1. taxes, civil or criminal fines, penalties or sanctions;
2. multiplied damages, except where provided for under the Lanham Act, Unfair Competition Act or other statutes or common laws relating to copyright and trademark infringement; or
3. the costs of recall, correction, reproduction, redistribution or reprinting of **matter**, nor any related expenses in connection therewith.

Insurability of punitive or exemplary damages shall be determined to the fullest extent possible by federal law or the state law of any jurisdiction with a substantial relationship to the **insured**, this policy or such covered **claim**.

M. Matter means any communication fixed in a tangible medium of expression used in an advertisement in connection with **advertising**, regardless of its nature or form, including but not limited to art, creative expression, data, entertainment, film, facts, fiction, graphics, literary composition, music, news, photographs, pictures, opinions, sound recordings and video.

N. Named Insured means the person or organization named in Item 1. in the Declarations of this policy.

O. Occurrence means:

1. the acquisition, creation and compilation of **matter** for **advertising**;
2. the exhibition, dissemination or display of **advertising**; or
3. the providing of **advertising professional services**.

For purposes of this insurance, all **occurrences** arising out of the same or related subject, event, situation, person or class of persons, irrespective of the number of repetitions, versions or forms of said **occurrence**, shall be deemed to be one **occurrence** and the date of the first **occurrence**, if any, during the **policy period** shall be deemed to be the **occurrence** date. The Limits of Liability and Retention(s) in effect on the **occurrence** date shall apply.

P. Piracy means the wrongful use, reprinting or reproduction of copyrighted intellectual property.

Q. Policy period means the period beginning with the inception date shown in Item 2. of the Declarations and ending with the earlier of:

1. the date of cancellation of this policy; or
2. the expiration date shown in the Declarations.

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R. Property damage means:

1. physical harm to or destruction of tangible or intangible property, including its loss of use; or
2. loss of use of tangible or intangible property that has not been otherwise physically harmed or destroyed.

S. Subsidiary means any entity in which the **Named Insured** owns, directly or through one or more **subsidiaries**, more than fifty percent (50%) of the issued or outstanding voting securities.

T. Title means the caption or name of **matter**.

U. Unfair competition means the infringement, misappropriation or misuse of an intellectual property right in **matter**.

III. EXCLUSIONS

The **Company** shall not be obligated to defend or to pay **loss** or **defense costs** arising from **claims**:

- A.** for or arising out of any fee, billing or charge by an **insured** or actual or alleged intentional breach of any contract or agreement.
- B.** for or arising out of ownership disputes relating to **matter** or services supplied by any present or former partner, joint venture, officer, director, employee or any **independent contractor**, who has supplied or is supplying **matter** or related services to the **insured**.
- C.** for or arising out of usual and ordinary business activities, practices and transactions that do not directly arise from a covered **occurrence**, including **claims** made by current or former employees, applicants for employment or any of their spouses, heirs, executors, administrators or legal representatives.
- D.** for or arising out of an actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the **insured**.
- E.** for or arising out of any actual or alleged failure to effect and maintain any policy of insurance.
- F.** for or arising out of actual or alleged infringement of patent or inducement to infringe a patent.
- G.** for or arising out of actual or alleged false or misleading **advertising** or for **unfair competition** arising therefrom, but only with respect to the intentionally false and misleading **advertising** of the **insured's** own products or services, and regardless of whether such false or misleading **advertising** about the **insured's** own products or services also disparages the products or services of another.
- H.** for or arising from actual or alleged **bodily injury** or **property damage**, but this exclusion shall not apply to **bodily injury** arising exclusively from emotional distress.
- I.** for or arising out of actual or alleged violation of a statute, regulation or common law that prohibits antitrust activities, price fixing, price discrimination, monopolization or restraint of trade.
- J.** for or arising out of actual or alleged violation of a statute, regulation or common law that governs the offer, sale or purchase of securities or commodities, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, any state "Blue Sky" law or any amendment to the foregoing.
- K.** for or arising out of any fraudulent, dishonest or criminal act, as determined by judge, jury or legal admission.
- L.** for or arising from actual or alleged breach of fiduciary relationships, including but not limited to theft or disclosure of trade secrets and breach of fiduciary duty or loyalty.

- M. against an **insured** that is brought by or on behalf of another **insured** or any business entity that is owned, managed or operated, directly or indirectly, by an **insured** or any parent company, **subsidiary**, successor or assignee of an **insured**, or anyone affiliated with an **insured** or such business through common majority interest or control; however, this exclusion shall not apply if such business entity is an **insured's** customer, is bringing the **claim** in that capacity and is acting totally without the solicitation, assistance, participation or intervention of any **insured**.
- N. for or arising from an investigation or proceeding initiated by an administrative agency, including but not limited to the Federal Trade Commission or Federal Communications Commission.
- O. made by ASCAP, SESAC, RIAA, BMI or other music licensing organization on their behalf or for others arising from the **insured's** failure to procure or maintain requisite licenses or payment of royalties.
- P. for or arising out of the actual or alleged unauthorized collection, use or dissemination of internet user information through web cookies or other online profiling processes or for unlawful access to or invasion of any computer software, operating system or network, electronic mail or voice mail system by the **insured**.
- Q. for or arising out of an **occurrence** which has been the subject of any notice to an **insured** of a **claim** or a potential **claim**, prior to the inception date of this policy.

IV. LIMITS OF LIABILITY AND RETENTION

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A. Limits of Liability

1. The Limit of Liability set forth in Item **4.a.** of the Declarations shall be the most the **Company** shall pay for **loss** resulting from an **occurrence**.
2. The Limit of Liability set forth in Item **4.b.** of the Declarations shall be the most the **Company** shall pay for all **loss** payable under this policy.
3. The Limits of Liability apply regardless of the number of:
 - a. **insureds** covered under this policy;
 - b. **occurrences**;
 - c. Insuring Agreements;
 - d. policies issued by the **Company**;
 - e. persons or organizations who sustain or claim **loss**; or
 - f. **claims** made or suits filed.
4. **Occurrences** that take place on one or more dates during the **policy period**, or during two or more consecutive policies issued by the **Company**, involving the same or related subject, event, situation, person or class of persons, irrespective of the number of repetitions, versions or forms of said **occurrence**, shall be deemed to be one **occurrence** and therefore, one **claim** and one **loss**. The date of the first **occurrence**, if any, during the **policy period** shall be deemed to be the **occurrence** date. The Limits of Liability and Retention(s) in effect on the **occurrence** date shall apply.

The **Company** shall pay **defense costs** in addition to the Limits of Liability. However, if the applicable Limit of Liability is exhausted by the payment of **loss**, all obligations of the **Company** under this policy, including its duty to pay **defense costs**, shall be completely fulfilled and extinguished, and the **Company** shall have no further obligations under this policy.

B. Retention

The Retention identified in Item **3.** of the Declarations shall be any combination of **loss** or **defense costs** first incurred and payable by or on behalf of the **insured** for each **claim**. The **Company's** Limits of Liability are in excess of the Retention set forth in Item **3.** of the Declarations. The Retention shall not reduce the Limits of Liability and shall apply separately to each **occurrence**.

V. GENERAL CONDITIONS

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A. Notice of Claim

As a condition precedent to the coverage afforded by this policy, the **insured** shall provide prompt notification of any potentially covered **claim** in writing and shall forward every demand, notice or summons to the name and address listed in Item **6.** of the Declarations.

Such notice must include particulars sufficient to identify the **insured** and the claimant and provide full information with respect to the date of the **occurrence** at issue and the circumstances giving rise to the **claim**.

B. Conduct of Defense and Cooperation of the Insured

The **Company** shall retain counsel to represent the **insured** for the defense of a **claim** covered by this policy and shall pay all **defense costs** incurred in the defense of such covered **claim** in excess of the Retention. The **insured** may consult with the **Company** regarding the selection of defense counsel with respect to any covered **claim** or for which a defense is provided, and shall cooperate as follows:

1. the **insured** shall provide any documents, information, correspondence or pleadings reasonably requested by the **Company**;
2. the **insured** shall attend hearings, trials, settlement conferences and/or mediations and assist in securing and complying with discovery requests and procuring the attendance of witnesses;
3. at the **Company's** request, the **insured** shall assist in protecting and enforcing any right of contribution or indemnity against any third person or organization who may be liable to the **insured**; and
4. no **insured** shall make any admissions of liability, but this shall not apply to the correction or retraction of **matter**.

C. Settlement, Judgment and Appeal

The **insured** may settle any **claim** if the total cost of **loss** and **defense costs** is less than the remaining Retention without prior consent from the **Company**. If, however, any combination of **loss** and **defense costs** exceeds the Retention, no offer to settle shall be made without prior written consent from the **Company**, which shall not be unreasonably withheld. If the **insured** and the **Company** disagree with respect to settlement, the following provisions shall apply:

1. if the **insured** is willing to accept the judgment of a trial or appellate court, and if the **Company** disagrees, the **Company** shall have the right to continue to defend the **claim** or may appeal from the judgment. All **defense costs** and **loss** arising from any new trial or appellate action, as well as any increase in the judgment shall be paid by the **Company**. Any increase in the judgment shall not affect or serve to increase the Limits of Liability; or
2. if the **Company** is willing to accept a settlement offer or judgment from a trial or appellate court to resolve a **claim**, and the **insured** is not willing to accept such settlement offer or judgment, and provided that such amount exceeds the **insured's** Retention, the **Company** may tender such amount in excess of the Retention to the **insured** and be relieved of further liability for the **claim**.

D. Policy Period

This policy will begin on the effective date shown in Item **2.** of the Declarations. This policy shall continue in force until the expiration date also shown in Item **2.** of the Declarations, unless earlier terminated.

E. Territory

This policy's territory is worldwide.

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F. Currency

If judgment is rendered or settlement is made in a currency other than United States dollars, payment under this policy shall be made in United States dollars at the applicable rate of exchange on the date the final judgment is rendered or other date with the mutual consent of the **insured** and the **Company**.

G. Premium

The **Named Insured** shall pay to the **Company** the premium stated in Item **5.** of the Declarations. The premium may be subject to change during the **policy period** based upon additions or deletions of **insured's advertising** activities or changes in the provisions of this policy by endorsement as agreed upon by the **Named Insured** and the **Company**.

H. Material Changes in Exposures

1. This policy shall extend to any newly created or acquired entities, **subsidiaries** or mergers, where the **Named Insured** maintains an ownership interest or voting power greater than 50%, but only where the **Named Insured** is the surviving entity and if reported to the **Company** no later than ninety (90) days after the effective date of such acquisition, creation or merger or at the end of the **policy period**, whichever is earlier. Coverage is not available for any **occurrence** that takes place after the effective date of such acquisition, creation or merger unless the **Company** has been notified and has accepted the additional exposure, which may be subject to an additional premium and/or change in terms and conditions.
2. If a sale, transfer or dissolution of a **subsidiary**, division or other part of the **Named Insured's** assets takes place during the **policy period**, there shall be no coverage for the divested entity(ies) under this policy for any **occurrence** that takes place after the effective date of said sale, transfer or dissolution.

I. Other Insurance

If the **insured** has other valid insurance for a **claim** also covered by this policy, the insurance provided by this policy shall be excess over such other insurance, unless such other insurance was specifically issued as excess over this policy. If this policy is excess over other insurance, the **Company** will pay only its share of the amount of the **loss**, if any, that exceeds the sum of:

1. the total amount that all other insurance would pay for **loss** in the absence of this policy; and
2. the total of all retentions and self-insured amounts under all insurance policies.

J. Subrogation

In the event of any payment of **loss** or **defense costs** under this policy, the **Company** shall be subrogated to all the **insured's** rights of recovery against any person or organization in the event of payment of **loss** or **defense costs** under this policy. The **insured** shall take whatever action is necessary to secure such rights and shall do nothing to prejudice such rights. The **Company** shall have no subrogation rights against the **insured**.

Recovered amounts shall first be applied to offset legal expenses associated with the subrogation action. The remainder shall be distributed proportionally to both the **insured** for payments made under the self-insured retention obligation and to the **Company** for any **defense costs** and **loss** associated with the **claim**.

K. Assignment

An assignment by any **insured** of the **insured's** rights and duties under this policy shall not bind the **Company** without its prior written consent.

L. Action against this **Company**

1. No action shall be taken against the **Company** unless there has been full compliance with all of the terms of this policy nor until **loss** has been determined by final judgment against the **insured** or by

written settlement agreement between the **Named Insured**, the claimant and the **Company**.

2. Any person or organization, who has secured such final judgment or is a party to such written settlement agreement, shall be entitled to recover to the full extent of the insurance afforded by this policy.
3. No person or organization shall have any right under this policy to join the **Company** as a party to any **claim** against the **insured** to determine the **insured's** liability, nor shall the **Company** be impleaded by the **insured** or its legal representative.

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M. Bankruptcy of Insured

Bankruptcy or insolvency of the **insured** or of the **insured's** estate shall not relieve the **Company** of any of its obligations under this policy.

N. Authority of Named Insured

The **Named Insured** shall be deemed the agent of all other **insureds** with respect to the terms and conditions of this policy.

O. Changes to this Policy

Notice to the **Company's** agent or knowledge possessed by any agent, producer or broker of the **insured** shall not effect a waiver or a change in any part of this policy, nor estop the **Company** from asserting any right under this policy's terms, conditions or limitations; nor shall such terms, conditions or limitations be waived or changed except by endorsement issued to form a part of this policy and signed by the **Company's** agent.

P. Cancellation and Nonrenewal

1. The **Named Insured** may cancel this policy at any time by mailing to the address shown in Item **6.** of the Declarations written notice stating when thereafter such cancellation shall be effective or by surrendering this policy to the **Company** to the name and address shown in Item **6.** of the Declarations.
2. This policy may be cancelled by the **Company** by mailing to the **Named Insured**, at the address shown in Item **1.** of the Declarations, written notice stating the reason(s) for cancellation and when, but not less than sixty (60) days thereafter, such cancellation shall be effective. If cancellation is for failure to pay premium when due, the **Company** shall give written notice when, but not less than ten (10) days thereafter, such cancellation shall be effective.
3. If the policy is terminated by the **Named Insured**, the **Company** shall refund the unearned premium computed at the customary short rate. If the policy is terminated by the **Company**, the **Company** shall refund the unearned premium computed pro rata. Payment or tender of any unearned premium by the **Company** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.
4. If the **Company** nonrenews this policy, the **Named Insured** shall be mailed a notice at the address shown in Item **1.** of the Declarations stating the reason(s) for nonrenewal at least sixty (60) days prior to the end of the **policy period**. An offer by the **Company** of different terms, conditions and/or premium shall not constitute nonrenewal or cancellation by the **Company** of this policy.

Q. State Endorsements and Statutory Provisions

State endorsements shall be added to this policy to conform to statutory requirements or to address public policy concerns of the state where this policy has been issued. If any term or condition of this policy is contrary to any specific statutory provision of the state in which this policy is issued, said term or condition shall be deemed to be severable and such statutory provision shall apply. The remaining policy provisions shall remain in full force and effect.

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R. Representations

By accepting this policy, the **Named Insured** and the **insureds** agree that the statements in the Declarations, insurance application and all supplementary information are true, accurate and complete. Such representations are material to the acceptance of the risk agreed to by the **Company**. This policy is issued in reliance upon the truth of such representations and incorporates all agreements existing between the **insureds** and the **Company**.

In the event the insurance application, including supplementary information submitted or required to be submitted therewith, contains any misrepresentation or omission that materially affects the **Company's** acceptance of the risk or the hazard assumed by the **Company** or if such misrepresentation or omission was made with the intent to deceive, this policy shall be void from its inception.