

# Liberty Prime Plus Policy

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## LIBERTY MUTUAL INSURANCE COMPANY

(A Stock Insurance Company, hereinafter the "Insurer")

### FIDUCIARY LIABILITY COVERAGE PART

#### I. INSURING CLAUSES

##### A. Fiduciary Liability

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Claim** first made against the **Insureds** during the **Policy Period** or the **Discovery Period**, if exercised, for any **Wrongful Acts** by the **Insureds** or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible, if such **Wrongful Acts** take place prior to the end of the **Policy Period**.

##### B. Voluntary Settlement Programs

The Insurer shall pay on behalf of the **Insureds** a **Voluntary Settlement** and **Defense Costs** which the **Insureds** become legally obligated to pay resulting from a **Settlement Program Notice** first given to the Insurer during the **Policy Period** or the **Discovery Period**, if exercised, provided such **Voluntary Settlement** and **Defense Costs** are incurred after such **Settlement Program Notice** is first given to the Insurer.

This Insuring Clause B shall be subject to a Sublimit of Liability of \$50,000. Such Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Clause B. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Part. No Retention shall apply to this Insuring Clause.

#### II. DEFINITIONS

For purposes of coverage under this Coverage Part:

A. **Administration** means (i) counseling or failure to provide proper or timely notice to employees, beneficiaries or **Insured Plan** participants with respect to any **Insured Plans**, (ii) providing interpretations with respect to any **Insured Plan**, (iii) handling records in connection with any **Insured Plan**, and (iv) enrolling, terminating or canceling employees, beneficiaries or participants under any **Insured Plan**.

B. **Claim** means:

1. a written demand for monetary damages or other relief,
2. a civil proceeding commenced by the service of a complaint or similar pleading,
3. an arbitration proceeding,
4. a criminal proceeding commenced by a return of an indictment,
5. a formal administrative or regulatory adjudicatory or investigative proceeding commenced by the filing of a notice of charge, formal investigative order or similar document,
6. a formal administrative or regulatory investigation (including a fact-finding investigation by the Department of Labor, Pension Benefit Guaranty Corporation or similar authority) commenced by the service upon or other receipt by the **Insured** of a written notice or subpoena from the investigating authority identifying the **Insured** as a person against whom a formal proceeding may be commenced, or

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7. a request to the **Insured** by a prospective claimant to toll or waive any statute of limitation, against any **Insured**, including any appeal therefrom.

All suits, complaints or similar proceedings arising out of the same facts are to be considered a single **Claim** under the Policy.

Solely with respect to Insuring Clause B, **Claim** means a **Settlement Program Notice**.

- C. **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.
- D. **Fiduciary** means a fiduciary as defined by **ERISA** of a **Insured Plan**, or a person or entity who exercises discretionary control with respect to the management of an **Insured Plan** or the disposition of its assets.
- E. **Fiduciary Wrongful Act** means:
1. any breach of responsibilities, obligations or duties imposed upon Fiduciaries of any **Insured Plan** by **ERISA** or by the common or statutory law of the United States, any state, or other jurisdiction anywhere in the world;
  2. Any other matter claimed against any Insured solely by reason of their service as Fiduciaries of any **Insured Plan**; or
  3. any negligent act, error or omission solely in the **Administration** of any **Insured Plan**.
- F. **Insureds**, either in the singular or plural, means:
1. any **Insured Persons**,
  2. the **Company**,
  3. the **Insured Plans**; or
  4. any other organization, **Insured Plan** or natural person listed as an **Insured** in this **Policy**.
- G. **Insured Person**, either in the singular or plural, means:
1. any one or more persons who were, now are or shall be duly elected or appointed directors, trustees, **Managers** or officers of, or full-time or part-time employees of, the **Company**, or, with respect to a **Company** incorporated outside the United States, their functional equivalent; and
  2. any one or more other natural persons who were, now are, or shall hereafter be duly elected or appointed trustees, directors, officers or employees of any **Company** or of any **Insured Plan** in his or her capacity as a **Fiduciary** or trustee of an **Insured Plan** or as a person performing **Administration** for an **Insured Plan**.
- H. **Insured Plan** means:
1. any welfare benefit plan as defined in **ERISA** or any similar common or statutory law of the United States or other jurisdiction anywhere in the world, which sponsored solely by the **Parent Company** or jointly by the **Parent Company** and a labor organization solely for the benefit of the employees of the **Parent Company** located anywhere in the world and which:

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- a. existed on the **Inception Date** of this **Policy**; or
- b. is created or acquired by the **Parent Company** after the **Inception Date** of this **Policy**, provided that if the assets of such created or acquired plan exceed 25% of the total plan assets of all **Insured Plans** as of the **Inception Date** of this **Policy**, the **Parent Company** shall give written notice of such creation or acquisition to the Insurer within 90 days of such creation or acquisition, shall provide such information as the Insurer may require, and shall pay any additional premium required by the Insurer.

Coverage for any plan described in subsection b. above shall only be afforded with respect to **Fiduciary Wrongful Acts** taking place after the date such plan was created or acquired;

2. any non-qualified plan not subject to regulation under Title I of **ERISA** or which does not meet the qualification requirements under Section 401(a) of the Internal Revenue Code of 1986, as amended, but only with respect to conduct described in subsection 3. of the definition of **Fiduciary Wrongful Act**;

**Insured Plan** shall not include any “multiemployer plan” or “employee stock ownership plan” as defined by **ERISA**, unless such plan is specifically included as an **Insured Plan** by endorsement to this **Policy**.

- I. **Loss** means the amount which the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs**. Solely with respect to Insuring Clause B, **Loss** means **Voluntary Settlements** and **Defense Costs**.

- J. **Loss** does not include:

1. any amount for which the **Insureds** are absolved from payment;
2. taxes, fines or penalties imposed by law other than:
  - a. the 5% penalty imposed under § 502(i)-1 of **ERISA**;
  - b. civil penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, provided that the Insurer’s maximum aggregate liability for all such civil money penalties under this Coverage Part shall be subject to a sublimit of \$25,000 that shall be the maximum aggregate amount that the Insurer shall pay for all such penalties and shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Part; or
  - c. solely with respect to Insuring Clause B, **Voluntary Settlements**;
3. the multiple portion of any multiplied damage award;
4. costs to comply with any injunctive or other non-monetary relief or any agreement to provide any such relief;
5. matters uninsurable under the law pursuant to which this **Policy** is construed; or
6.
  - a. (i) benefits due or to become due under any **Insured Plan**,
  - (ii) benefits which would be due under any **Insured Plan** if such **Insured Plan** complied with all applicable law, or
  - (iii) that portion of any settlement or judgment which constitutes such benefits; except to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**;

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- b. contributions owed by the **Company** to any **Insured Plan** for which any of the **Insureds** failed to collect from the **Company**; or
- c. the return or reversion to an employer of any contribution or asset of an **Insured Plan**.

This definition does not exclude punitive or exemplary damages to the extent such damages are insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the Insurer, this **Policy** or such **Claim**.

- K. **Potential Claim** means that if during the **Policy Period** or the **Discovery Period**, if purchased, the **Insureds** first become aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under a Coverage Part and during such **Policy Period** or **Discovery Period** give written notice to the Insurer of:
1. the names of the potential claimants and a description of the specific **Wrongful Act** which forms the basis of such potential **Claim**,
  2. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Act**,
  3. the consequences which have resulted or may result from such specific **Wrongful Act**,
  4. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**, and
  5. the circumstances by which the **Insureds** first became aware of such specific **Wrongful Act**,

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made during the **Policy Period** or **Discovery Period**, if purchased, in which such written notice was received by the Insurer.

No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

- L. **Settlement Program** means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.
- M. **Settlement Program Notice** means prior written notice to the Insurer by any **Insured** of the **Insured's** intent to enter into a **Settlement Program**.
- N. **Settlor Wrongful Act** means an act arising out of the non-fiduciary responsibilities of an **Insured Person** in connection with an **Insured Plan**, including the creation of an **Insured Plan**, amendments to an **Insured Plan**, and termination of an **Insured Plan**. A **Settlor Wrongful Act** does not include: (i) the **Administration** of an **Insured Plan**; or (ii) the operation of the **Parent Company** other than with respect to the **Insured Plan**.
- O. **Voluntary Settlement** means any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by an **Insured Plan** with any statute, rule or regulation; provided **Voluntary Settlement** shall not include (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, or penalties relating to an **Insured Plan** which, as of the earlier of inception date of this **Policy** or the inception date of the first policy in an uninterrupted series of policies issued by the Insurer of which this **Policy** is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

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P. **Wrongful Act** means a **Fiduciary Wrongful Act** or **Settlers Wrongful Act**.

## III. EXCLUSIONS

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

1. 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 direct or indirect renewal or replacement;
2. based upon, arising out of, or attributable to any written demand, proceeding or investigation against any **Insured** which was made or pending on or before the applicable Prior Litigation Date set forth in the Coverage Schedule in Item VI (A) of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
3. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof;
4. based upon, arising out of, or attributable to (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (b) any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; but this exclusion shall not apply to any **Claim** by or on behalf of a beneficiary or participant in an **Insured Plan** for diminution in value of any securities owned by the **Insured Plan** in any organization other than the **Company**;
5. for **Wrongful Acts** actually or allegedly committed or attempted by a **Subsidiary**, **Insured Plan** or their **Insureds** before the date such **Subsidiary** or **Insured Plan** became an **Insured**;
6. based upon, arising out of, or attributable to any deliberately fraudulent or criminal act or omission or willful violation of law by such **Insured**;
7. based upon, arising out of, or attributable to such **Insured** gaining in fact any profit, remuneration or financial advantage to which such **Insured** was not legally entitled;
8. for liability of others assumed by the **Insured** under any oral, written or implied contract or agreement, however this exclusion shall not apply to the extent (i) the **Insured** would have been liable in the absence of such contract or agreement; or (ii) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Insured Plan** was established;
9. based upon, arising out of, or attributable to any actual or alleged obligation of any **Insured** pursuant to any government-mandated insurance for worker's compensation, unemployment, social security or disability benefits; however this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 or Health Insurance Portability and Accountability Act of 1996, as amended; or
10. for discrimination in violation of any law other than **ERISA**.

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### IV. TERMINATION OF AN INSURED PLAN

If before or during the **Policy Period** an **Insured Plan** is terminated, coverage with respect to such **Insured Plan** and its **Insureds** under the Fiduciary Liability Coverage Part (if purchased) shall continue until termination of this **Policy**. Such coverage continuation shall apply with respect to **Claims** for **Wrongful Acts** taking place prior to or after the date the **Insured Plan** was terminated.



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PRESIDENT  
Timothy M. Sweeney



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SECRETARY  
Damon Hart