

# Association Professional Liability



## LIBERTY INSURANCE UNDERWRITERS INC.

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

### ASSOCIATION PROFESSIONAL LIABILITY INSURANCE CLAIMS-MADE POLICY

#### NOTICE

**THIS IS A CLAIMS-MADE AND REPORTED POLICY. PLEASE REVIEW THE POLICY CAREFULLY.**

**THE POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE. CLAIM EXPENSES ARE INCLUDED IN, AND WILL REDUCE, THE LIMIT OF LIABILITY.**

#### I. INSURING CLAUSE

In consideration of the payment of the premium and subject to all of the terms of this policy, the Company agrees to pay, on behalf of the **Insured**, **Loss** arising out of any **Claim** both first made against the **Insured** and reported to the Company during the **Policy Period** or the Extended Reporting Period, if applicable, but only if such **Claim** arises out of a **Wrongful Act** committed on or after any applicable retroactive date and before the end of the **Policy Period**.

The Company shall have the right and duty to defend any **Claim** to which this insurance applies. However, the Company shall have no duty to defend the **Insured** against any such **Claim** seeking **Loss** to which this insurance does not apply.

Further:

- A. The amount the Company will pay for **Loss** is limited as described in Section III of this policy; and
- B. The Company's right and duty to defend ends when the Company has used up the applicable Limits of Liability.

#### II. DEFINITIONS

- A. **Association** shall mean the organization designated as the **Named Insured** in Item 1 on the Declarations of this policy.
- B. **Claim** shall mean any suit or arbitration proceeding naming the **Insured** and alleging a covered **Wrongful Act**.
- C. **Claim Expense** shall mean that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorney's fees and expert's fees), and expenses (other than regular and overtime wages, salaries or fees of any director, trustee, officer or employee of the **Insured**) incurred in defending and investigating **Claims** and the premium for appeal, attachment or similar bonds.

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- D. **Directors, Officers and Staff** shall mean:
1. any person who was, is now, or shall be a directors, officer or staff member of the **Association**, including any **Association** executive, board members, committee members or employee, whether compensated or not, but solely while acting in their capacity as such;
  2. the estates, heirs, legal representatives, or assigns of deceased persons who were **Directors, Officers and Staff** of the **Association**;
  3. the legal representatives or assigns of the **Directors, Officers and Staff** of the **Association** in the event of their incompetency, insolvency or bankruptcy;
  4. any other person while acting on behalf of the **Association** at the direction of an Officer or the Board of Directors of the **Association**.
- E. **Insured** shall mean:
1. the **Association**; and
  2. **Directors, Officers and Staff**.
- F. **Loss** shall mean the total amount that the **Insured** is legally obligated to pay on account of each **Claim** and for all **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, costs and **Claim Expenses**. **Loss** does not include:
1. fines or penalties imposed by law, including but not limited to punitive or exemplary damages, or the multiple portion of any multiplied damage award;
  2. any amount which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
  3. any amount which the Insured is absolved from paying by reason of any covenant, agreement, or court order.
- G. **Policy Period** shall mean that period from the effective date of this policy to the expiration date as set forth in the Item 2 of the Declarations, or its earlier termination, if any.
- H. **Wrongful Act** shall mean any negligent act, error or omission by the **Association**, or its **Directors, Officers and Staff** in the discharge of their duties on behalf of the **Association**, including but not limited to, any actual or alleged:
1. discrimination, whether based upon race, sex, age, national origin, religion, disability or sexual orientation;
  2. sexual or racial harassment;
  3. anti-trust, restraint of trade or other unfair business practices except as limited by Exclusions B and C;
  4. interference with or breach of any employment contract, whether oral, written, expressed or implied;
  5. wrongful termination;
  6. false arrest, wrongful detention, or imprisonment, or malicious prosecution;
  7. wrongful entry or eviction, or other invasion of the right of private occupancy;
  8. any libel or slander, including, but not limited to any publication, dissemination, or utterance constituting the offenses of libel, defamation, disparagement, or utterances in the course of or related to advertising, broadcasting, or telecasting activities conducted by or on behalf of the **Association**.

### III. DEDUCTIBLE – LIMITS OF LIABILITY

- A. The Company will pay one hundred percent (100%) of any **Loss** in excess of the Deductible stated in Item 5 of the Declarations up to the Limit of Liability stated in Item 4 of the Declarations. **Loss**

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and **Claim Expense** are to be used to satisfy the Deductible. A separate Deductible must be satisfied for each **Claim**.

- B. The Company's maximum or aggregate liability in a **Policy Period** shall be the Limit of Liability stated in Item 4 of the Declarations. Both **Loss** and **Claim Expense** shall apply against such Limit of Liability and the **Claim Expense** shall be part of, and not in addition to, such Limit of Liability. Such maximum or aggregate liability shall be with respect to **Claims** made in (1) that **Policy Period** and (2) the Extended Reporting Period of Section VIII M, if applicable. Such extension of insurance by an Extended Reporting Period shall be included within and subject to the Limit of Liability provided by the preceding Policy Period; it shall not increase the available Limit of Liability, if any. **Claim Expenses** are part of, and not in addition to such Limit of Liability;
- C. Subject to Section III B above, the Company's maximum liability for each **Claim** shall be the Limit of Liability stated in Item 4 of the Declarations. Both **Loss** and **Claim Expense** shall apply against such Limit of Liability and the **Claim Expense** shall be part of, and not in addition to, such Limit of Liability. For purposes of this Section III C, **Claims** based on or arising out of the same, interrelated, or a series of similar or related acts, errors, omissions, or offenses of the **Association** or one or more of its **Directors, Officers and Staff**, shall be considered a single **Claim**.

### IV. EXCLUSIONS

THIS POLICY DOES NOT APPLY TO **LOSS** ON ACCOUNT OF ANY **CLAIM**:

- A. alleging, arising out of, based upon, or attributable to any act, error, omission, or offense of any **Directors, Officers and Staff** while such **Directors, Officers and Staff** was acting in any capacity outside the scope of his/her duties on behalf of the **Association**;
- B. for a criminal act;
- C. for fraud or dishonesty by any **Insured**, however, no fact pertaining to or knowledge possessed by any **Directors, Officers and Staff** shall be imputed to any other **Directors, Officers and Staff** to determine if coverage is available;
- D. alleging, arising out of, based upon, or attributable to bodily injury, sickness, disease, mental anguish, emotional distress, death, or for the loss of society, consortium, or services of any person or entity, or for damage to or destruction of any tangible property including loss of use thereof;
- E. based on any workers' compensation law, unemployment compensation law, employers liability law, disability benefits law, or any similar federal, state or local law;
- F. alleging that any **Insured** gained personal profit or advantage to which they were not legally entitled; however, no fact pertaining to or knowledge possessed by any **Directors, Officers and Staff** shall be imputed to any other **Directors, Officers and Staff** to determine if coverage is available;
- G. based upon or attributable to the administration of, participation in, contributions to, or payments from any pension or benefits plan or trust fund, including but not limited to any **Claim** based upon the Employee Retirement Income Security Act of 1974, Public Law 93-406, commonly referred to as Pension Reform Act of 1974, and amendments thereto, or similar provisions of any federal, state or local statutory law or common law;

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H. when:

1. on or prior to the effective date of coverage, a **Directors, Officers and Staff**, with authority to act on behalf of the **Association** in the particular subject area, had knowledge of a **Wrongful Act** and its consequence or had reason to believe that a **Claim** may be made as a result thereof; or
  2. any part of the **Wrongful Act** occurred prior to the effective date of this policy and there is or was other insurance available to the **Association** or its **Directors, Officers and Staff** for such **Claim**;
- I. for breach of contract, oral or written, express or implied, except that this exclusion does not apply to any **Directors, Officers and Staff** (other than any **Directors, Officers and Staff** that is a director or officer of the **Association**) and alleging a breach of an employment contract;
- J. alleging, arising out of, based upon, or attributable to any actual or alleged failure to secure or maintain insurance, adequate insurance, or a bond or an adequate bond;
- K. by a governmental entity, agency or department, whether federal, state or local including, but not limited to, the United States Department of Justice and the Securities and Exchange Commission. This exclusion does not apply to any **Claim** alleging a violation of any state or federal anti-trust, price fixing or restraint of trade laws nor does it apply to any **Claim** of discrimination brought by or through the Equal Employment Opportunity Commission or similar state or local agency;
- L. by and/or behalf of any **Insured** under this policy against any other **Insured** under this policy;  
This exclusion shall not apply to:
1. any **Claim** made by and/or on behalf of the **Directors, Officers and Staff** that is not made pursuant to their duties on behalf of the **Association**; or
  2. any **Claim** brought by **Directors, Officers and Staff** (other than any **Directors, Officers and Staff** that is a director or officer of the **Association**) alleging discrimination, harassment, breach of employment contract, or wrongful termination;
- M. alleging, arising out of, based upon, or attributable to any actual, alleged or threatened pollution, contamination, or any environmental impairment resulting from seepage, discharge, dispersal, release, or escape of any solid, liquid or gaseous, or radioactive matter including, but not limited to smoke, vapors, soot, fumes, acids, alkalis, chemicals, or toxic matter; or waste materials (including materials to recycled, reconditioned, or reclaimed); or oil or other petroleum substances or derivatives (including any oil refuse or oil mixed with waste), or thermal or vibratory effect including, but not limited to, heat or cold, into or upon land, the atmosphere, or any water course or body of water, underground water or water table supplies, whether such results directly, indirectly or in concurrence or in any sequence for the Insured's activities or the activities of others and whether or not such is sudden gradual, accidental, intended foreseeable, expected, fortuitous, or inevitable and whenever or however such occurs;
- N. based upon, arising from, or relating to any demand, suit, proceeding, order, decree, or judgment entered or pending against any **Insured** on or prior to the inception date of this policy;
- O. arising out of the insolvency, liquidation, or rehabilitation of any insurance company whose program of professional liability, medical, life, or other insurance is or has been recommended, endorsed, made available, or sponsored by any **Insured** or arising out of the refusal and/or failure of any such insurance company to honor or pay any **Claim** or arising out of the cancellation of any such program.

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### V. NOTICE OF CLAIM OR SUIT

A **Claim** shall be considered as being first made at the earlier of the following times:

- A. when the Company first receives written notice from the **Insured** that a **Claim** has been made; or
- B. when the Company first receives written notice from the **Insured** of any specific circumstance involving a particular person or entity which may result in a **Claim**.

All **Claims** arising out of the same, a related, or a continuing **Wrongful Act** shall be considered as having been made at the time the first such **Claim** is made and shall be subject to the same Limit of Liability.

### VI. SUPPLEMENTARY PAYMENTS

- A. With regard to any covered **Claim**, the Company will pay, in addition to the applicable Limit of Liability, up to \$250 for loss of earnings to each individual **Insured** for each day or part of day of such **Insured's** attendance, at the Company's request, at a trial, hearing or arbitration proceeding involving a civil suit against such **Insured** for a covered **Loss**, but the amount so payable for any one or series of trials, hearings or arbitration proceedings arising out of the same or related **Wrongful Act** shall in no event exceed \$5,000; and
- B. The Company will pay, in addition to the Limit of Liability, up to \$5,000 per individual **Insured** for attorney fees and other costs, expenses or fees incurred by such **Insured** and as a result of:
  - 1. an investigation by a state licensing board or governmental regulatory body; or
  - 2. providing a defense to a proceeding before a state licensing board or governmental regulatory body,incurred as the result of a notice of investigation or proceeding, whichever applies, first received by the **Insured** and reported to the Company during the **Policy Period** and arising out of a **Wrongful Act**.

### VII. DEFENSE AND SETTLEMENT

The Company shall select and assign defense counsel; however, the **Association** or its **Directors, Officers and Staff** may engage additional counsel, solely at their expense, to associate in their defense any **Claim** covered hereunder. The Company shall also have the right to investigate any **Claim** and/or negotiate the settlement thereof, as it deems expedient, but the Company shall not commit the **Association** and/or the **Directors, Officers and Staff** to any settlement without their consent. If the **Association** and/or **Directors, Officers and Staff** refuse to consent to any settlement recommended in writing by the Company and elect to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then the Company shall be relieved of any further duty to defend the **Claim**, and the liability of the Company for **Loss** shall not exceed the amount for which the **Claim** could have been settled as well as the **Claim Expense** incurred by the Company or with the Company's consent up to the date of such refusal. Further, the **Association** and **Directors, Officers and Staff** shall cooperate with the Company and, upon the Company's request, assist in making settlements and in the conduct of suits. Furthermore, the neither the **Association** nor the and **Directors, Officers and Staff** shall not assume any obligations, incur any costs, charges, or expenses or enter into any settlement without the Company's written consent.

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### VIII. GENERAL CONDITIONS

#### A. DECLARATIONS AND APPLICATIONS

By acceptance of this policy, the **Insured** agrees that the statements in the Declarations and Application are its/his/her agreements and representations, that this policy was issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance.

#### B. ASSOCIATION AUTHORIZATION

By acceptance of this policy, the **Association** specified on the Declaration Page agrees to act on behalf of all other **Insureds** with respect to the giving and receiving of all notices to the Company required herein, and the receiving of any return premiums that may become due under this policy and the **Insureds** agree that the **Association** shall so act on their behalf.

#### C. MERGER OR CONSOLIDATION

In the event the **Association** acquires by merger, or consolidates with, or is merged into any other organization after the effective date of this policy, immediate written notice thereof shall be given to the Company together with such information as the Company may request, and the **Association** shall pay any additional premium required in the event the Company agrees to continue the policy.

#### D. POLICY CHANGES

The terms of the policy shall not be waived or changed by any means other than by endorsement issued by the Company to form a part of this policy.

#### E. LIBERALIZATION OF POLICY TERMS

Notwithstanding Condition D, if during the period that this insurance is in force, excepting any Extended Reporting Period, the Company introduces any changes in the form of the policy which would broaden or extend coverage without an increased premium, then such broadened or extended coverage shall inure to the benefit of the **Association** and the **Directors, Officers and Staff** without any increase in premium.

#### F. TERRITORIAL CLAUSE

This policy shall apply to **Claims** arising from any **Wrongful Act** wherever occurring, provided that the **Claim** is brought in the United States of America, its territories or possessions, or Canada.

#### G. ACTION AGAINST COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, the **Association** and the **Directors, Officers and Staff** shall have complied fully with all terms of this policy, and the amount of the **Insured's** obligation to pay has been finally determined either by final judgment against such **Insured** after actual trial and all appeals, if any, or by written agreement between the **Insured**, the claimant, and the Company.

Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the **Insured** to determine such **Insured's** liability.

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### H. SUBROGATION

In the event of any payment under this policy, the Company shall be subrogated to the extent of such payment to all rights of the recovery therefore, and the **Directors, Officers and Staff** of the **Association** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the Company effectively to bring suit in the name of the **Association** or its **Directors, Officers and Staff**.

### I. OTHER INSURANCE (subject to Section IV, EXCLUSIONS, H(2)):

If there is other valid insurance (whether primary, excess, contingent, or self-insurance) which may apply against a **Loss** or **Claim** covered by this policy, the insurance provided hereunder shall be deemed excess insurance over and above the applicable limit of all other insurance or self-insurance.

When this insurance is excess, the Company shall have no duty under this policy to defend any **Claim** or suit that any other insurer or self-insurer has a duty to defend. If such other insurer or self-insurer refuses to defend such **Claim** or suit, the Company shall be entitled to the **Insured's** rights against all such other insurers or self-insurers for any defense costs incurred by the Company.

When this insurance and other insurance applies to a **Claim** on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the **Loss** and/or **Claim Expense** than the applicable Limit of Liability under this policy for such payments bears to the total applicable limit of liability of all valid and collectible insurance against such **Claim**. Subject to the foregoing, if a **Loss** occurs involving two or more policies, each of which provides that its insurance shall be excess, each will contribute pro-rata.

### J. CANCELLATION

This insurance may be cancelled on the customary short-rate basis by the **Association** at any time by written notice or by surrender of this policy to the Company or its authorized representative and the Company shall refund the paid premium less the earned portion thereof within thirty (30) days of the latter of the effective date of the cancellation or the date of delivery of the **Association's** notice of intent to cancel. This insurance may also be cancelled by the Company, or by its authorized representative on its behalf, by sending to the **Association**, by first-class, registered or certified mail to the **Association's** last known address, not less than ninety (90) days written notice stating the specific reason for such cancellation and when the cancellation shall be effective. In such case, the Company shall refund the paid premium less the earned portion thereof within ten (10) business days after the effective date of cancellation, subject always to the retention by the Company of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by the Company or the **Association**. In case of non-payment of premium only thirty (30) days written notice of the cancellation must be given by the Company. Proof of mailing will be sufficient proof of notice.

Cancellation by the Company shall only be effective if based on one or more of the following reasons:

1. non-payment of premium;
2. this policy was obtained through a material misrepresentation;
3. violation of any term and/or condition of the policy;
4. the risk originally accepted under this policy has measurably increased; or
5. the Company's loss of the reinsurance that provided coverage for all or a substantial part of the risk insured under this policy;

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### K. NONRENEWAL

The Company will renew this policy unless written notice of the Company's intent not to renew, stating the specific reasons for non-renewal, is mailed to the **Association** not less than sixty (60) days prior to the effective date of the non-renewal.

### L. EXTENDED REPORTING PERIOD

In the case of cancellation or non-renewal of this policy by the **Association** or the Company for any reason (other than nonpayment of premium):

1. this policy will automatically be extended for a period of sixty (60) days from the date of such cancellation or non-renewal, but only for **Wrongful Acts** committed on or after any applicable retroactive date and prior to the effective date of such cancellation or non-renewal (Automatic Extended Reporting Period); and
2. the **Association** shall have the right, upon payment of the respective additional premium set forth below, to an extension of the coverage granted by this policy for the respective period set forth below:
  - a. 90% of the full annual premium for this policy, for a period of twelve (12) months commencing the end of the Automatic Extended Reporting Period;
  - b. 135% of the full annual premium for this policy, for a period of twenty-four (24) months commencing the end of the Automatic Extended Reporting Period;
  - c. 150% of the full annual premium for this policy, for a period of thirty-six (36) months commencing the end of the Automatic Extended Reporting Period;
  - d. 175% of the full annual premium for this policy, for a period of sixty (60) months commencing the end of the Automatic Extended Reporting Period;
  - e. 200% of the full annual premium for this policy, for a period of ninety-six (96) months commencing the end of the Automatic Extended Reporting Period;
  - f. 225% of the full annual premium for this policy, for an unlimited period commencing the end of the Automatic Extended Reporting Period,but only for **Wrongful Acts** committed on or after any applicable retroactive date and prior to the effective date of such cancellation or non-renewal (Supplemental Extended Reporting Period).

This right to purchase a Supplemental Extended Reporting Period shall terminate, however, unless written notice of such election, together with the additional premium, is received by the Company or its authorized agent from the **Association** within sixty (60) days after the effective date of cancellation or non-renewal.

At the commencement of any Supplemental Extended Reporting Period, the entire premium therefore shall be deemed earned, and the Company shall not be liable to return to the **Insured** any portion of the premium for the Supplemental Extended Reporting Period.

The fact that the period during which **Claims** must be first made against the **Insured** under this policy is extended by virtue of any Extended Reporting Period shall not in any way increase the Limit of Liability of this policy. The Limit of Liability available under any Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability available under this policy issued to the **Association**.

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### M. PUNITIVE OR EXEMPLARY DAMAGES

Punitive and exemplary damages are excluded by this policy. However, if a covered **Claim** is brought against an **Insured** that seeks both compensatory, and punitive or exemplary damages, then the Company will nevertheless defend such **Claim** and waive its right to reimbursement for those **Claim Expenses** associated with the defense of the punitive or exemplary damages charge.

### M. BANKRUPTCY

Neither bankruptcy nor insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

### O. COMPANY REIMBURSEMENT

Except with respect to Subsection M., PUNITIVE OR EXEMPLARY DAMAGES, above, with respect any covered **Claim** that contains an allegation for loss to which this policy does not apply, the Company reserves the right to seek reimbursement for any **Claim Expenses** incurred relative to such loss.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its president and secretary.

A handwritten signature in black ink, appearing to read "David G. Cohen".

President

A handwritten signature in black ink, appearing to read "Dexter R. Lepp".

Secretary