



EVANSTON INSURANCE COMPANY

FEDERAL EMPLOYEE PROFESSIONAL LIABILITY INSURANCE (CLAIMS MADE & REPORTED) POLICY

DECLARATIONS

MASTER POLICY NUMBER: FEPL-2000-05

POLICY PERIOD: Effective Date: January 1, 2005
Expiration Date: January 1, 2006

INSURED

Current Employees of the United States Government who have been issued a valid CERTIFICATE of INSURANCE, under the terms and conditions of this POLICY and who, as of the inception date of the CERTIFICATE of INSURANCE, are employees of Various Agencies of the Federal Government.

With respect to the Insured, as defined in this policy, the LIMIT of LIABILITY of the Company in the aggregate as respects each certificate holder and the ANNUAL PREMIUM, which includes the D.C. surplus lines premium tax, shall be as shown on the face sheet of each valid CERTIFICATE of INSURANCE issued by the Company in accordance with this MASTER POLICY, subject to the terms, conditions, limitations and exclusions hereof.

LIMITS OF LIABILITY

\$1,000,000 Each Person, Per Incident and in the Aggregate

\$5,000,000 Per Incident for Multiple Insureds

\$25,000,000 Total Program Aggregate (for all Coverages Combined – A, B, C and D)

Sub-Limits of Liability

\$100,000 Defense Costs for disciplinary proceedings, judicial sanctions or criminal proceedings or investigations

\$10,000 Accidental Death Benefit

INSURING AGREEMENT

The Company will pay on behalf of the Insured those sums which the Insured shall become legally obligated to pay as damages in suits defended either by the Department of Justice or the Company because of acts, errors or omissions of the Insured which constitute either common law, statutory or Constitutional torts, committed or arising out of the "course and scope of employment" of the Insured as a full time or part time employee of the United States Government as follows:

- Coverage A – Personal Injury**
- Coverage B – Bodily Injury**
- Coverage C – Property Damage**
- Coverage D – Accidental Death Benefit**



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to which this policy applies. In the event the Department of Justice declines to defend any suit, the Company shall defend the suit against the Insured seeking money on account of such Personal Injury, Bodily Injury or Property Damage, even if any of the allegations of the suit are groundless, false, or fraudulent; and, may make such investigation of any claim or suit as it deems expedient. The Company shall defend any allegation in a civil suit of a criminal act.

Should the Department of Justice refuse to provide the Insured with a defense even if the refusal is based on a conflict of interest between the Department of Justice and the insured, the Company shall select counsel to defend him in any action.

The Company retains the right to make settlement of any claims it deems appropriate to settle.

In the event defense of the Insured in any claim or suit is granted by the Department of Justice or its designee, the Insured may, nevertheless request the Company to provide him with an attorney selected by the Company to monitor and oversee the defense being provided by the United States, with that shall not be unreasonably withheld.

EXCLUSIONS

This policy does not apply:

- A. to any obligation for which the Insured or any carrier as the insurer may be held liable under any workers' compensation, unemployment compensation, disability benefits law, or other similar law;
- B. to damages arising out of the willful violation of a penal statute or penal ordinance committed by or with the knowledge or consent of the Insured, or damages arising out of acts of fraud committed by or at the direction of the insured with affirmative dishonesty or actual intent to deceive or defraud;
- C. to liability assumed by the Insured under any contract or agreement;
- D. to Bodily Injury arising out of the ownership, operation, or use of any land motor vehicle designed for use principally on public highways, including any machinery or apparatus attached thereto, or and aircraft or watercraft;
- E. to Property Damage to:
 - 1. Property owned or occupied by or rented to the United States Government or the insured.
 - 2. Property use by the Insured.
 - 3. Property in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control;
- F. (1) Bodily Injury, Property Damage, Personal Injury, Advertising Injury or any Administrative Law Proceeding arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any Insured or any person or organization for whom may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:



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- (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
- (ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
- (b) Claim or Suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

G. (1) Asbestos, asbestos fibers, asbertiform talc or any material and/or substances containing asbestos, asbestos fibers or asbertiform talc or any asbestos related bodily injury, property damage, personal injury, or administrative law proceeding, or exposure to asbestos, asbestos fibers or asbertiform talc in any form, and/or manifestation of any asbestos related bodily injury, including but not limited to asbestosis, mesothelioma and/or brochogenic carcinoma; or

(2) Any alleged act, error or omission or duty involving asbestos, asbestos fibers or asbertiform talc or any material and/or substances containing asbestos, asbestos fibers or asbertiform talc its use, exposure, presence, existence, detection, removal, elimination or avoidance; or

(3) The use, exposure, presence, existence, detection, removal, elimination or avoidance of asbestos, asbestos fibers or asbertiform talc or any material and/or substances containing asbestos, asbestos fibers or asbertiform talc in any environment, building or structure.

H. Any procedures, including grievance procedures and arbitration hearings, that are provided by any collective bargaining

DEFENSE SETTLEMENT AND SUPPLEMENTARY PAYMENTS

I. The Company will pay in addition to the applicable limits of liability:

- A. All expenses incurred by the Company, all costs taxed against the Insured in any suit defended by the Company and all interest on the entire amount of and judgement therein which accrues after entry of the judgement therein which accrues after entry of the judgement and before the Company has paid or tendered or deposited in court that part of the judgement which does not exceed the limit of the Company's liability thereon;
- B. Premiums on appeal bonds including supercedes bonds required in any such suit, premiums on bonds to release attachments in any such suit for any amount not in excess of the applicable limit of liability of this policy, but the Company shall have no obligation to apply for or furnish any such bonds;
- C. Reasonable expenses incurred by the Insured at the Company's request, including actual loss of wages (but not loss of other income) not to exceed \$50. per day because of his attendance at hearings or trials at such request;
- D. Reasonable expenses incurred by the Insured for first aid to others at the time if an accident, for Bodily Injury to which this policy applies.



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- II. The Company shall select counsel and pay the costs of defense and monetary penalties subject to the sub-limit of liability on the face sheet of each valid Certificate of Insurance arising out of any “disciplinary proceedings,” “judicial sanctions” or “criminal proceedings,” or any investigations into the Insured’s alleged misconduct instituted against the Insured from any act, error or omission in professional services rendered or which should have been rendered in the Insured’s professional capacity committed or arising during the period that the Insured is a full time or part time employee of the United States Government. The Company shall be liable for costs of defense except in the criminal proceedings to the extent that a finding, verdict or other final disposition unfavorable to the Insured shall establish that the act or error or omission was criminal. The Company has no duty to defend if the Insured had prior knowledge of any potential “Disciplinary Proceeding,” “Criminal Proceeding,” or “Judicial Sanctions Proceeding” being contemplated or any investigations into the Insured’s alleged misconduct prior to the effective date on the face sheet of each valid Certificate of Insurance. Monetary penalties do not include any loss of benefits or loss of wages as a result of any adverse decision in a disciplinary or criminal proceeding.

- III. The Company shall not be obligated to pay any claim or judgement nor to defend any suit or claim after the applicable limit or sub-limit of the Company’s liability has been exhausted by payment of judgements or settlements and costs associated therewith.

DEFINITIONS

“Personal Injury” means injury resulting from any claim arising out of violation of property rights or deprivation of any rights, privileges, or immunities secured by the common law, the Constitution or the laws of the United States of America for which Federal Government employees acting in the performance of their official duties may be held liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress. However, no act shall be deemed to be, or result in, personal injury unless committed in the performance of the official Federal duties of the Insured.

“Bodily Injury” means bodily injury, sickness, disease or death resulting therefrom sustained by and person or persons caused by an act, error or omission of the Insured while acting in the performance of the official Federal duties of the Insured.

“Property damage” means damage to or destruction of property including loss of use thereof sustained by any person or persons caused by an act, error or omission of the Insured while acting in the performance of the official Federal duties of the Insured.

“Incident” includes the initial act or acts, errors or omissions by the Insured in the performance of the official Federal duties of the Insured attributable to a specific alleged violation of the common law, statutory or Constitutional law, and any subsequent acts, errors or omissions which directly relate to or arise out of the original violation.

“Master Policyholder” means the VARIOUS AGENCIES OF THE FEDERAL GOVERNMENT.

“Insured” means any current employee of the United States Government who holds a valid certificate of insurance issued by the Company.

“Disciplinary Proceedings” means any proceedings, including investigations, before any entity, or entities, established by constitutional provision, statute, regulation, or court rules, to investigate, review or impose sanctions for charges of misconduct. “Disciplinary Proceedings” does include “Security Clearance Proceedings.” “Disciplinary Proceedings” does not include “Performance Proceeding,” “Physical and Medical Qualification Determination,” or “Suitability Determination.”

“Criminal Proceedings” means any proceedings, including investigations, before any entity, or entities, established by constitutional provision, statute, regulation, or court rules, to investigate, review or prosecute charges of criminal misconduct.

“Judicial Sanctions” means any monetary penalty imposed by any adjudicatory body as a result of any act error or omission in professional services.



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“Course and scope of employment” means an “incident” of any kind or character that has to do with and originates in the work, services, trade or profession of the employee’s federal agency and that is performed by the employee while engaged in or about the furtherance of the affairs or services of that federal agency. A determination of ‘course and scope of employment’ will be made pursuant to the terms of this policy and will not be determined by any allegation, charge, or assessment of the employing agency, the Department of Justice or other entity.

“Performance Proceeding” means an investigation, demotion, removal, determination, appraisal, or process by which an insured is evaluated, measured or rated, either individually or as part of a group, as part of the organizational effectiveness in the accomplishment of agency mission and goals, as specified under any provision of federal law, rule or regulation.

“Physical and Medical Qualification Determination” means an investigation and/or determination based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations conducted to determine physical or mental fitness for a federal position, as specified under any provision of federal law, rule or regulation.

“Suitability Proceedings” means an investigation, determination, appraisal or process involving a determination of suitability for employment, as specified under any provision of federal law, rule or regulation.

“Security Clearance Proceedings” means an investigation, determination, appraisal or process involving an insured’s ability to achieve required governmental approval and or access to classified information, including but not limited to Executive Order 12968 of August 2, 1995, and its successors.

“Accidental Death Benefit” means a loss of death while acting in the scope of employment resulting from an accident while acting in the “course and scope of employment,” directly or independently of all other causes. Also, the loss of death must take place within fifty-two weeks after the accident and will be payable to the legal next of kin.

TERRITORY

This policy applies only to acts committed or alleged to have been committed within the legal jurisdiction of the Master Policyholder; or anywhere in the world while the Insured is acting within the “course and scope of employment.”

POLICY PERIOD

This policy applies to CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD arising from the performance of official Federal duties alleged to have been rendered:

- (a) During the policy period, or
- (b) Prior to the effective date of this insured provided that:
 - (1) the Insured had no knowledge of any claim or suit, or any act, error or omission, which might reasonably be expected to result in a claim or suit;
 - (2) there are no other certificates or policies pursuant to which the Insured is afforded any coverage for such claim or suit.

DISCOVERY PERIOD

The Discovery Period does not extend the policy period or change the scope of coverage provided. If this policy is cancelled by either party, or for any reason non-renewed, other than for non-payment of the premium by the Insured, then the insurance provided by this policy is extended to apply to claims made against the Insured during the 36 calendar months following immediately upon such expiration or termination, but only for acts committed or alleged to have been committed prior to such expiration or termination, and provided that there are no other certificates or policies pursuant to which the Insured is afforded coverage for such claim or suit.



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The Discovery Period does not apply to claims covered by any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such claims.

CONDITIONS

A. LIMIT OF LIABILITY

Regardless of the number of (1) Insureds under this policy; (2) persons or organizations who sustain damages payable under this policy; or (3) claims made or suits brought on account of insurance afforded by this policy, the Company's liability is limited as follows:

- (1) The limit of liability stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all damages under Coverage A, B and C sustained by any one person as the result of and one incident but subject to the above provisions respecting "each person," the total limit of available to each insured employee of the United States Government for all damages under Coverage A, B, C and D sustained by two or more persons as the result of any one incident shall not exceed \$5,000,000 for "each incident."
- (2) The limit of liability stated in the Declarations as "aggregate" is the limit of the Company's liability during the policy period for all damages under Coverage A, B, C and D or all combined.

B. INSURED'S DUTIES IN THE EVENT OF OCCURANCE, CLAIM OR SUIT

- (1) Upon receipt of legal process or other written notice of an action likely to give raise to a claim hereunder, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and address of the injured and of available witness shall be given be or for the Insured to the Company or any of its authorized agents immediately.
- (2) Upon receipt of legal process or other written notice of an action likely to give rise to a claim hereunder, the Insured shall cooperate with the Company, to the full extent of Federal law and regulation, and upon the Company's request assist in making settlements, and the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization except against the United States or any of its agencies who may be liable to the Insured because of claims with respect to which insurance is afforded under this policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of the witnesses. The Insured shall not, except at his own cost, voluntarily make a payment assume any obligation or incur and expense other than for first aid to others at the time of accident.

C. ACTION AGAINST THE COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgement against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company. Nothing in this provision shall bar the Insured from seeking to enforce its rights under the policy in the absence of a judgement.

Any person or organization or the legal representative thereof who has secured such judgement or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the Insured to determine the Insured's liability, nor shall the Company be impleaded by the Insured or his legal representative.



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Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve or increase that Company of any of its obligations hereunder.

D. OTHER INSURANCE

The insurance under this policy shall be excess insurance over any other valid and collectible insurance or other legal rights of recovery available to the Insured, either as an Insured under other policy or otherwise.

E. SUBROGATION

In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery thereof against any third party or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to the full extent of Federal law and regulations to secure such rights. In the event this policy responds for defense and/or money damages on behalf of and Insured and, thereafter, and the Insured collects damages costs and attorney's fees from any third party, the Company shall be entitled to and all such damages, costs and attorney's fees so collected, up to the limit of its actual payment under this policy.

F. CHANGES

Notices to any agent, or knowledge possessed by any agent or by any other person shall not effect a waiver or change in part of this policy or stop the Company from asserting and right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy signed by a duly authorized agent of the Company and accepted by the Named Insured.

G. CANCELLATION

This coverage may be cancelled by the Master Policyholder by surrender of his certificate of insurance to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This coverage may be cancelled by the Company by mailing to the Master Policy holder at the address shown in the Declarations written notice stating when not less that sixty (60) days thereafter such cancellation is for non-payment of premium, cancellation may be upon ten (10) days notice. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing. Notice to the Master Policyholder shall be considered as notice to individual certificate holders. If the Master Policyholder or Company cancels, the minimum earned premium is 100%.

H. NON-ASSIGNABLE

The interest of the Insured under this policy shall not be assignable.

I. TERMS OF POLICY-STATUTE

Terms of this policy, which are in conflict with the Federal law and regulations and/or the law, and regulations of the state wherein this policy is issued are hereby amended to conform to such statutes.

J. PREMIUM

All premiums for this policy shall be computed in accordance with the Program.



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K. DECLARATIONS

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

Authorized Company Representative