


July 1, 2015

AGENT'S BULLETIN NO. 2015-7-ALL STATES

TO: All Agents

FROM: David Karns, CPCU, CRM, ARe 
Vice President – Underwriting, Ext. 106

RE: **Miscellaneous Legal Defense Coverage**

We have received numerous calls and emails regarding the Supreme Court's ruling on same-sex marriages. The main concern is whether or not liability coverage applies in the event a church gets sued for declining to perform a same-sex marriage.

The general liability form does not provide any coverage for this type of situation, since there is no bodily injury, property damage, personal injury or advertising injury. If a church is concerned about the possibility of a suit, we do offer Miscellaneous Legal Defense Coverage. This is not liability coverage, but rather expense reimbursement for defense costs. There is no coverage for any judgments against an insured.

Since we offer a 3-year policy term for the SMP product, we want to be sure you understand what limits of coverage can be added at the present time.

For new policies and 3-year renewals effective on or after April 1, 2015, the following limits are available:

Each Defensible Incident/Aggregate	Annual Premium
\$5,000/\$15,000	\$20
\$10,000/\$30,000	\$40
\$15,000/\$45,000	\$60
\$20,000/\$60,000	\$80
\$25,000/\$75,000	\$100
\$30,000/\$90,000	\$120
\$40,000/\$120,000	\$140
\$50,000/\$150,000	\$160

For new policies and 3-yr renewals effective prior to April 1, 2015, the following limits are available. Higher limits and reduced rates will be available at the next 3-year renewal.

\$5,000/\$15,000	\$40
\$10,000/\$30,000	\$80
\$15,000/\$45,000	\$120

Please let us know if you have any questions or concerns. The coverage form is attached for your review.

LEGAL DEFENSE COVERAGE

(Entries required to complete the Schedule will be shown below or on the "declarations".)

SCHEDULE

Coverage D - Legal Defense Coverage Limits

\$ _____ Each Defensible Incident Limit
\$ _____ Aggregate Limit

The Commercial Liability Coverage is amended as follows:

DEFINITIONS

With respect to the coverage provided by this endorsement, the following definitions are added:

1. "Administration" means performing the following acts for the "Employee Benefit Program":
 - a. giving counsel to "employees";
 - b. interpreting the "Employee Benefit Program";
 - c. handling and maintenance of records;
 - d. effecting enrollment, termination, or cancellation of "employees";
 - e. calculation service and compensation credits;
 - f. calculating benefits;
 - g. preparing "employee" communication material, reports required by government agencies, and reports concerning participants' benefits;

- h. processing claims; or
- i. collection of contributions and distribution thereof;

provided all of these acts are authorized by "you".

2. "Defense costs" means the cost of reasonable and customary attorney's fees for legal services rendered in defending "suits" brought against "you" and includes attorney's expenses in relation to those services.

The fees and expenses must qualify as a deductible expense to "you" under Section 162 of the United States Internal Revenue Code. This applies even if "you" are not subject to the code.

3. "Defensible incident" means any acts, omissions, or failures of the "insured". Every act, omission, or failure involving substantially the same general circumstances shall be considered one "defensible incident" subject to the Each Defensible Incident Limit in force at the time the first such "defensible incident" covered by this policy occurred.

"Defensible incident" does not include any deliberate acts, omission, or failures for purposes of causing a "suit" to be filed against "you".

4. "Employee Benefit Program" means one or more of the following types of plans, or insurance, maintained by "you" for the benefit of "your" "employees":
 - a. group life insurance or group accident and health insurance;
 - b. profit sharing plans, pension plans, retirement plans, or employee stock subscription plans.
 - c. worker's compensation, unemployment insurance, salary continuation plans, social security benefits, or disability benefits insurance;
 - d. travel plans, savings plans, or vacation plans; or
 - e. any other type of insurance or plan described in the Schedule.
5. "Law enforcement inquiry" means an investigation undertaken by law enforcement officials and directed against a person suspected of committing a criminal offense under federal, state, or local law, including any related prosecution for such alleged offense.
6. "Retaliation" means actions taken against an "employee" in response to the "employee's" actual or attempted exercise of his or her legal rights.
7. "Sexual misconduct or sexual molestation" is any activity which is sexual in nature whether permitted or not permitted, including but not limited to sexual assault; sexual battery; sexual relations; sexual acts; sexual activity; sexual handling; sexual massage; sexual exploitation; sexual exhibition; photographic, video, or other reproduction of sexual activity; sexual stimulation; fondling; intimacy; exposure of sexual organs; lewd, or lascivious behavior or indecent exposure; fornication; undue familiarity; or unauthorized touching.
8. "Suit" means a proceeding in a court of proper jurisdiction. "Suit" includes:
 - a. a civil proceeding;
 - b. an arbitration proceeding to which "you" must submit or do submit with "our" consent; or
 - c. any other alternative dispute resolution proceeding to which "you" submit with "our" consent; or
 - d. any "law enforcement inquiry".
9. "Wrongful acts" means any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by the "directors, officers, or trustees" in the discharge of their duties (jointly or severally) or any matter claimed against them solely by reason of their being "your" "directors, officers, or trustees".
10. "Wrongful employment practice" means one or more of the following offenses:
 - a. work related harassment, including sexual harassment that created a hostile work environment or quid pro quo sexual harassment;
 - b. wrongful termination; wrongful failure to hire, promote, or grant tenure; wrongful demotion, reassignment, discipline, or negligent evaluation; or misrepresentation of the conditions of employment;
 - c. unlawful work related discrimination include discrimination based on a person's race, color, national origin, religion, gender, age, medical condition, physical impairment, sexual orientation, sexual preference, pregnancy, or other protected class as described under federal, state, or local law;
 - d. invasion of privacy;

- e. employment related defamation or intentional infliction of emotional distress; or
- f. "retaliation".

PRINCIPAL COVERAGES

"We" provide the principal coverages described below, subject to the Coverage D -- Legal Defense Coverage Each Defensible Incident Limit and Aggregate Limit.

Coverage D -- Legal Defense Coverage

"We" will pay "defense costs" incurred by the "insured" that result from a "suit" to which this insurance applies. This insurance applies to these "defense costs" only if:

1. the "suit" results from a "defensible incident" that takes place in the "coverage territory"; and
2. the "suit" results from a "defensible incident" that occurs during the policy period.

No other obligation or liability to perform acts or services is covered.

EXCLUSIONS

The exclusions in the policy to which this endorsement is attached are deleted and replaced by the following exclusions with respect to the coverage provided by this endorsement.

This insurance does not apply:

1. to any "defense costs" incurred because of:
 - a. "bodily injury", "property damage", "personal injury", or "advertising injury";

- b. "wrongful acts";
 - c. "wrongful employment practices";
 - d. injury arising out of:
 - 1) any act of "sexual misconduct of sexual molestation"; or
 - 2) any acts, errors, or omissions in providing or failing to provide any professional service; or
 - 3) negligent acts, errors, or omissions of the "insured" in the "administration" of an "Employee Benefit Program";
 - e. a dispute involving this contract or any other contract issued by "us";
 - f. any class action "suit";
 - g. any obligation of the "insured" under a workers' compensation, disability benefits, unemployment compensation, or any similar law; or
 - h. any dispute between the "insured" and "us".
 - i. any dispute or suit involving ownership of real property.
2. if any "defense costs" are:
 - a. an obligation of "ours" or any other insurance company under any other insurance policy or endorsement; or
 - b. an obligation of any other person, group, or organization (other than an "insured");even if the obligation is only a partial obligation.
 3. to any "damages".

WHAT MUST BE DONE IN CASE OF LOSS

With respect to the coverage provided by this endorsement, Notice and Other Duties are deleted and replaced by the following:

1. Notice --

"You" must see to it that "we" are notified within 60 days of "your" becoming aware of any "defensible incident" that may result in a "suit". To the extent possible, notice should include:

- a. the nature of the "defensible incident"; and
- b. the how, when, and where the "defensible incident" took place.

Notice of a "defensible incident" is not notice of a "suit"

2. Other Duties --

If "suit" is brought against the "insured", "you" must:

- a. notify "us" within 60 days of the date "suit" is brought against the "insured"
- b. as soon as practicable, send "us" written notice of the "suit". This notice should include the nature of the "defensible incident" and how, when, and where the "defensible incident" took place; and
- c. give "us" the name, address, and other information sufficient to identify the attorney or firm who will be defending "you" in the "suit".

HOW MUCH WE PAY

With respect to the coverage provided by this endorsement, How Much We Pay is deleted and replaced by the following:

1. The Coverage D -- Legal Defense Coverage "limits" shown in the Schedule, subject to items 2. through 5. of this section, are the most "we" will pay regardless of the number of:
 - a. "insureds" under this Legal Defense Coverage;
 - b. persons or organizations bringing "suits"; or
 - c. "suits" brought.
2. The Coverage D -- Legal Defense Coverage Aggregate Limit shown in the Schedule is the most "we" will pay for all "defense costs" incurred as a result of all "suits" brought against the "insured".
3. The Coverage D -- Legal Defense Coverage Each Defensible Incident Limit shown in the Schedule, is the most "we" will pay for the sum of all "defense costs" incurred as a result of all "suits" brought against the "insured" for any one "defensible incident".
4. The Coverage D -- Legal Defense Coverage Aggregate Limit applies separately to each consecutive 12 month period, beginning with the inception date of this coverage.

It also applies to any remaining policy period of less than 12 months, unless the policy period is extended after it is written. In that case, the Coverage D -- Legal Defense Coverage Aggregate Limit applicable to the preceding 12 months also applies to the period of time for which coverage is extended.

5. **Deductible** -- "We" will not make any payments for "defense costs" that fall within the deductible amount, except as provided under the Settlement of Deductible Condition. Once "defense costs" exceeds \$250, "we" will pay "defense costs" in excess of the deductible amount, up to "our" "limits". If payable under this endorsement, "defense costs" not exceeding the deductible amount are "your" responsibility.

This does not apply to any policy issued by "us" that is specifically written as excess insurance.

- e. **Arbitration** -- If "we" and the "insured" cannot reach an agreement concerning any of the "terms" if this Legal Defense Coverage, the disagreement will be settled by arbitration. The rules of the American Arbitration Association will be followed. The arbitrator shall have the power to determine the meaning of the "terms" of this coverage. The arbitrator shall not have the power to change or amend this coverage, unless "we" and all "insureds" consent to the change in writing.

CONDITIONS

1. With respect to the coverage provided by this endorsement, the following additional conditions apply.
- a. **Your Choice of an Attorney** -- "You" have a right to choose "your" own attorney, but "your" attorney must be licensed to provide legal service. "Your" attorney has the right to freely exercise his or her professional judgment in the defense of any "suit" against "you".
 - b. **Settlement of Deductible** -- "We" may pay all or any part of the deductible amount to effect settlement of a "suit". Upon notification of "our" action, "you" must promptly reimburse "us" for the part of the deductible amount that "we" have paid.
 - c. **Duty to Investigate or Defend** -- "We" have no duty to investigate or defend any "suit" brought against "you".
 - d. **Two or More Policies Issued By Us** --

If two or more policies issued by "us" apply to the same "insured" and these policies also apply to the same "suit", the maximum amount "we" will pay as "damages" under all the policies will not exceed the highest applicable "limit" that applies to any one of the policies.

2. With respect to the coverage provided by this endorsement, Insurance Under More Than One Policy is deleted and replaced by the following:

Insurance Under More Than One Policy --

- a. This insurance is primary and the amount of "our" obligation is not reduced because of other insurance which applies to the loss on other than a primary basis.
- b. However, if there is other insurance that is also primary and:
 - 1) contribution by equal shares is allowed, "we" will contribute equal amounts with the other insurers until:
 - a) "we" have either paid "our" "limit"; or
 - b) the "defensible costs" are fully paid,whichever comes first; or
 - 2) contribution by equal shares is not allowed, "we" will pay, up to "our" "limit", the proportion that "our" "limit" bears to the total of the "limits" of all policies providing coverage.

