



# OneBeacon Insurance Company

A Stock Company

435 Walnut Street – Philadelphia, PA 19106

## **ADVERTISER ADVANTAGE POLICY**<sup>®</sup>

(Defense Costs Within the Limit of Liability)

**DEFENSE COSTS** SHALL BE APPLIED AGAINST THE RETENTION AND THE LIMIT OF LIABILITY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY TO DETERMINE RIGHTS AND RESPONSIBILITIES.

Words and phrases that appear in boldface are defined in 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 policy Declarations and the terms, exclusions and conditions herein, the Company and the insured agree to the following:

### SECTION I — COVERAGE 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 Limit of Liability which the **insured** is legally required to pay to 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 term** in or for **scheduled advertising** 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, but only when alleged with the causes of action set forth under one or more of subparts 1 or 2 above or 4-6 below;
4. infringement of copyright, **piracy**, plagiarism and misappropriation of ideas under implied contract;
5. infringement of **title** or slogan;
6. unfair competition and **claims** under Section 43(a) of the Lanham Act or similar state statutes, but only when alleged with the causes of action set forth under one or more of subparts 1, 4 or 5 above;
7. negligent supervision of an employee, but only when alleged with the causes of action set forth under one or more of subparts 1-6 above.

#### B. 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.

## SECTION II — DEFINITIONS

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 **scheduled advertising** and who has been added to the policy by endorsement as an **insured**; or
2. an individual or entity added to the policy by endorsement as an **insured** in respect to **scheduled 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, but this definition does not include the redemption of lotteries, sweepstakes, contests or games of chance, including over or under redemption of any of the above.

**C. Assumed under contract** means liability assumed by the **insured** in a 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.

**D. Bodily injury** means bodily injury, sickness, disease, including death.

**E. Claim** means a demand or suit for money or services tendered to the **insured** for **loss** or equitable relief, 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**. **Claim** does not include an investigation or proceeding initiated by an administrative or regulatory agency, including but not limited to the Federal Trade Commission or Federal Communications Commission.

**F. Company** means the insurance **Company** shown on the Declarations Page.

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

1. reasonable fees necessitated by responding to a demand for a retraction or correction;
2. reasonable 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 Limit of Liability, but the **Company** is not responsible for procuring such bonds.

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

**H. Independent Contractor** means an individual or business entity providing **matter** or services to the **insured** pursuant to an express or implied contract or agreement.

**I. Insured** means:

1. the **Named Insured** and any **subsidiary**, and any person who was, is or becomes a director, officer, trustee, shareholder, principal, member, partner or employee of the **Named Insured** or any **subsidiary**, but only in respect to **claims** arising out of the course and scope of their duties as such;
2. the estate, heirs, legal representatives or assigns of an **insured** in the event of the death, incapacity or bankruptcy of an **insured**, but only if such **claim** would be subject to coverage under the policy if made against the **insured**;
3. the **insured's** lawful spouse, but only if the **claim** arises solely from the spouse's status as such or from the spouse's ownership interest in the **matter** giving rise to the **claim**, but only if such **claim** would be subject to coverage under the policy if made against the **insured**; or
4. any temporary or leased personnel of the **Named Insured** or any **subsidiary**, but only while acting under the direct supervision and on behalf of the **Named Insured** or **subsidiary**.

**J. Loss** means judgment, settlement and all forms of monetary damages as a result of a claim covered by this policy, including actual damages, statutory damages, punitive or exemplary damages, pre-judgment and post-judgment interest and plaintiff's attorneys' fees and costs included as part of a judgment. However, **loss** shall not include:

1. taxes, civil or criminal fines, penalties or sanctions, (other than punitive or exemplary damages); or
2. the cost of recall, correction, reproduction, redistribution or reprinting of **matter** and related expenses incurred by the **insured**, any **additional insured** or any indemnitee;
3. loss of profits; or
4. multiplied damages, except where provided for under the Lanham Act, Unfair Competition Act or other statute or common law relating to copyright or trademark infringement.

With regard to punitive damages, this insurance shall apply to the fullest extent permitted by law. Where an **insured** determines, based on written opinion of counsel, that punitive damages are insurable under any applicable law, the **Company** shall not challenge the **insured's** determination of insurability.

**K. Matter** means any communication, regardless of its nature or form, including but not limited to **advertising**, art, creative expression, data, entertainment, film, facts, fiction, graphics, literary composition, music, news, photographs, pictures, opinions, sound recordings and video, and the use of such **matter** by others with the permission of the **insured**.

**L. Named Insured** means the person or organization named in Item 1 in the Declarations of the policy.

**M. Occurrence** means:

1. the acquisition, creation and compilation of **matter** for **advertising**; and
2. the exhibition, dissemination or display of **advertising** through any medium.

**Occurrences** that take place on one or more dates during the **policy term**, 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 or versions, shall be considered a single **occurrence**. The Limits of Liability and Retention in effect when the first **occurrence** took place shall apply.

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

**O. Policy term** means the period beginning with the inception date shown in the Declarations and ending with the earlier of:

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

**P. 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.

**Q. Scheduled advertising** means the **insured's** products and services set forth in Item 2 of the Declarations or by endorsement.

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

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

### SECTION III — EXCLUSIONS

SPECIMEN

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 breach of any express or implied contract or agreement or failure of performance of contract, including breach of express or implied warranties;
- B. for or arising out of ownership disputes relating to **matter** or services supplied to the **insured** by any past, present or future **insured**, joint venturer or any **independent contractor**;
- C. for or arising out of usual and ordinary business activities and transactions including **claims** made by current or former employees, applicants for employment or any of their spouses, heirs, executors, administrators or legal representatives that do not directly arise from the content of **matter** gathered, uttered or disseminated in or for **scheduled advertising**;
- D. for or arising out of actual or alleged infringement of patent or inducement to infringe a patent;
- E. for or arising out of actual or alleged false or misleading **advertising** or for unfair competition arising therefrom;
- F. 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;
- G. for or arising from infringement or dilution of trademark, trade name, trade dress, service mark or service name or unfair competition arising therefrom, but this exclusion shall not apply to **claims** for infringement of **title** or slogan;
- H. for or arising out of actual or alleged violation of a statute, regulation or common law that prohibits antitrust activities, deceptive trade practices, price fixing, price discrimination, monopolization, restraint of trade or any unfair competition or conspiracy relating to any of these causes of action;
- I. for or arising out of the 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;
- J. for or arising out of any fraudulent, dishonest or criminal act, which shall have been determined by judge, jury or legal admission;
- K. 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;
- L. for or arising out of actual or alleged unauthorized collection, use or dissemination of internet user information through web cookies or other online profiling processes by or on behalf of the **insured** or for unlawful access to or invasion of any computer software, operating system or network, electronic mail or voice mail system by or on behalf of the **insured**;
- M. made by ASCAP, SESAC, BMI, RIAA or other music licensing entity on their behalf or for others arising from the **insured's** failure to procure or maintain requisite licenses or payment of royalties;
- N. 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 the policy;
- O. for or arising out of the transmission or dissemination of unsolicited commercial electronic mail or facsimiles.

**A. Limits of Liability**

**Defense Costs** are part of and not in addition to the Limit of Liability. The Limit of Liability set forth in Item 5(a) of the Declarations shall be the most the **Company** shall pay for **loss** and **defense costs** resulting from any **occurrence**. The Limit of Liability set forth in Item 5(b) of the Declarations shall be the most the **Company** shall pay for all **loss** and **defense costs** payable under this policy. The Limits of Liability apply regardless of the number of:

1. **insureds** covered under the policy;
2. **occurrences**;
3. Coverage Agreements;
4. policies issued by the **Company**;
5. persons or organizations who sustain or claim **loss**; or
6. **claims** made or suits filed.

If the applicable Limit of Liability is exhausted by the payment of **loss** and/or **defense costs**, all obligations of the **Company** under this policy, including its duty to pay **defense costs**, shall be completely fulfilled, and the **Company** shall have no further obligations under this policy.

**B. Retention**

The Retention identified in Item 4 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** Limit of Liability is in excess of the Retention set forth in the Declarations. The Retention shall not reduce the Limit of Liability and shall apply separately to each **occurrence**.

**SECTION V — GENERAL CONDITIONS****A. Notice of Claim**

The **insured** shall provide prompt notification of any potentially covered **claim** by whatever means is most expedient and shall forward all suit papers and other documents to:

First Media  
A Division of One Beacon Professional Partners  
Attention: Claims Administrator  
1-800-753-7545  
913-384-4822 — Fax

**B. Conduct of Defense and Cooperation of the Insured**

The **insured** shall retain counsel approved by the **Company**, whose approval shall not be reasonably withheld, for the defense of the **claim**. The **insured** shall cooperate with the **Company** with respect to any covered **claim** or for which a defense is being provided as follows:

1. the **insured** shall file responsive pleadings within the time required by state or federal law and keep the **Company** advised of all developments and expenses and provide the **Company** with any documents, information, correspondence or pleadings reasonably requested by the **Company**;
2. the **insured** shall attend hearings and trials, assist in securing and complying with discovery requests and procuring the attendance of witnesses;
- 3.

4. the **insured** and defense counsel shall comply with reasonable **claim** procedures established by the **Company**;
5. the **Company**, at its own expense, shall have the right to associate with the **insured** in the defense;
6. 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
7. no **insured** shall make any admissions of liability, but this shall not preclude the **insured** from retracting or correcting **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 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 the Limits of Liability; or
2. if the **Company** is willing to accept a settlement offer or judgment of a trial or appellate court 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 of **claim**.

#### D. Time of Inception, Policy Term

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

#### E. Territory

The policy's territory is worldwide.

#### 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 6 of the Declarations. The premium may be subject to change during the **policy term** based upon additions or deletions of **advertising** scheduled to the policy or changes in the provisions of the policy by endorsement as agreed upon by the **Named Insured** and the **Company**.

#### H. Changes in Advertising

This policy applies to **advertising** of the **insured's** products or services described in the Declarations or by endorsement on the effective date of the policy. The policy shall apply to **advertising** for newly created or acquired products or services of the **insured**, if reported to the **Company** and added by endorsement. Such new **advertising** activities shall be subject to underwriting approval, and the **Named Insured** shall pay any additional premium that may be required.

## I. Other Insurance

If the **insured** has other 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. 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 the policy shall not bind the **Company** without its prior written consent.

## L. Action against the 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.

## 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 the policy.

## N. Changes to the 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.

## O. Authority of Named Insured

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

**P. Cancellation and Non-renewal**

1. The **Named Insured** may cancel the policy at any time by mailing to First Media written notice stating when thereafter such cancellation shall be effective or by surrendering the policy to First Media.. Any unearned premium will be calculated in accordance with the customary short rate table and procedure.
2. This policy may be canceled by the **Company** by mailing to the **Named Insured**, at the address shown in 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. Any earned premium will be calculated pro rata. 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 **Company** non-renews this policy, the **Named Insured** shall be mailed a notice at the address shown in the Declarations stating the reason(s) for nonrenewal at least sixty (60) days prior to the end of the **policy term**.

**Q. State Endorsements**

State endorsements shall be added to the policy to conform to statutory requirements or to address public policy concerns of the state where the policy has been issued.

**R. Application Representations and Severability**

The **Named Insured** represents that the particulars and statements contained in the application and all materials submitted in connection therewith are true, accurate and complete and agrees that this policy is issued in reliance on the truth of such representations, and that such representations are material to the **Company's** acceptance of this risk. No knowledge possessed by any **insured** shall be imputed to any other **insured** for risk acceptance purposes and only knowledge possessed by any officer, director, partner, counsel, risk manager or other person whose signature appears on the application shall be imputed to the **Named Insured**.