

2017

PLF Primary Coverage Plan



Professional
Liability Fund

The Professional Liability Fund (“PLF”) is an instrumentality of the Oregon State Bar created pursuant to powers delegated to it in ORS 9.080(2)(a). The PLF Primary Coverage Plan ("Plan") is not intended to cover all claims that can be made against Oregon lawyers. The limits, exclusions, and conditions of the Plan are in place to enable the PLF to meet the statutory requirements and to meet the Mission and Goals set forth in Chapter One of the PLF Policies, including, “To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective loss prevention.” The limits, exclusions, and conditions of the Plan are to be fairly and objectively construed for that purpose.

While mandatory malpractice coverage and the existence of the PLF provide incidental benefits to the public, the Plan is not to be construed as written with the public as an intended beneficiary. The Plan is not an insurance policy.

Because the Plan has limits and exclusions, members of the Oregon State Bar are encouraged to purchase excess malpractice coverage and coverage for excluded claims through general liability and other insurance policies. Lawyers and their firms should consult with their own insurance agents as to available coverages. Excess malpractice coverage is also available through the PLF.

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INTRODUCTION

Effective 1.1.2017

Throughout this Professional Liability Fund (“PLF”) Primary Coverage Plan (“Plan”): **You** and **Your** refer to the Named Party shown in the Declarations; **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued; and **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth in the Plan. A List and Index of Defined Terms is attached as an Appendix.

SECTION I – COVERAGE AGREEMENT

Subject to the terms, conditions, definitions, exclusions, and limitations set forth in this Plan and the applicable **Limit of Coverage** and **Claims Expense Allowance**, as defined in Section VII, the coverage provided by this Plan is as follows:

A. Indemnity

The PLF will pay all sums a **Covered Party** is **Legally Obligated** to pay as **Damages** as a result of a **Claim** arising from a **Covered Activity** to which this **Coverage Period** applies, as determined by the rules set forth in Section IV.

A **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**.

Legally Obligated to pay **Damages** means a **Covered Party** is required to make actual payment of monetary **Damages** and is not protected or absolved from actual payment of **Damages** by reason of any covenant not to execute, other contractual agreement of any kind, or a court order, preventing the ability of the claimant to collect money **Damages** directly from the **Covered Party**.

Damages means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs, or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**.

B. Defense

1. Until the **Claims Expense Allowance** and the **Limit of Coverage** are exhausted, the PLF will defend a **Covered Party** against any **Suit** seeking **Damages** to which this Plan applies. The PLF is not bound by any **Covered Party's** agreement to resolve a dispute through arbitration or any other alternative dispute resolution proceeding and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

Suit means a civil lawsuit. **Suit** also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.

2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based on projected defense costs or on potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures to investigate, prevent, mitigate, review, or repair any **Claim** or matter that may create the potential for a **Claim**.

3. The PLF will pay **Claims Expense** the PLF incurs.

Claims Expense means: fees and expenses charged by any attorney designated by the PLF; all other fees, costs, and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair, or appeal of a **Claim**, or any matter that may create the potential for a **Claim**; or fees charged by any attorney designated by the **Covered Party** with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered **Claims Expense** and do not reduce the available **Limit of Coverage**.

4. Notwithstanding Exclusions 2 and 4 in Section VI, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process, and wrongful initiation of civil proceedings, provided such **Claims** arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

C. Exhaustion of Limits

The PLF is not obligated to investigate, defend, pay, or settle any **Claim** after the applicable **Limit of Coverage** and **Claims Expense Allowance** have been exhausted.

D. No Prior Knowledge or Prior Coverage

This Plan applies only to a **Covered Activity** that occurred after the Retroactive Date shown in the Declarations and either: (a) during the **Coverage Period**, or (b) before the **Coverage Period** if (i) on the effective date of this Plan, **You** had no knowledge of any **Claim** having been asserted or of any facts or circumstances that **You** were aware, or reasonably should have been aware, could reasonably result in a **Claim** arising out of the **Covered Activity** and (ii) there is no prior Plan or policy that provides coverage for such liability or **Claim**, whether or not the available limits of such prior Plan or policy are sufficient to pay any liability or **Claim**.

E. Coverage Territory

This Plan applies to **Suits** brought in the United States, its territories, or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a judgment rendered in any other such jurisdiction.

SECTION II – WHO IS A COVERED PARTY?

Only the following are **Covered Parties** under this Plan:

A. The Individual Attorney Named in the Declarations

You are a **Covered Party** under this Plan, or in the event of **Your** death, adjudicated incapacity, or bankruptcy, **Your** conservator, guardian, trustee in bankruptcy, or legal or personal representative, when acting in such capacity, is a **Covered Party**, regarding any **Claim** to which this Plan applies, provided, at the time of the error, omission, negligent act, or breach of duty on which such **Claim** is based: (1) **You** were engaged in **Private Practice**; (2) **You** were licensed to practice in Oregon; and (3) **Your Principal Office** was in Oregon.

Private Practice means providing **Professional Legal Services** or **Special Capacity Services** through a **Law Entity**. **Private Practice** does not include:

Your work or conduct as an employee of any entity that is not a **Law Entity**, including but not limited to any private entity or any governmental body, subdivision, or agency, whether or not **You** are employed as a public official or employee, if **You** are subject to the direction and control of the non-**Law Entity** regarding

the means and manner of providing services and are paid on a salaried basis, or hourly employee basis, as opposed to being retained as an independent contractor, paid on a fee for service or hourly fee basis; or

You work or conduct in any other capacity that comes within the defense and indemnity provisions of ORS 30.285 and 30.287, unless the public body rejects any duty to defend and indemnify **You**. If the public body rejects **You** defense and indemnity, the PLF will provide coverage, provided the **Claim** relates to a **Covered Activity** to which this Plan would otherwise apply, and the PLF will be subrogated to all **You** rights against the public body.

For purposes of determining the location of **Your Principal Office**, a law office is a location held out to the public as **You** law office. If **You** have only one law office, then that is the location of **Your Principal Office**. If **You** have two or more law offices and any of them is in Oregon, **Your Principal Office** is in Oregon if the total amount of time **You** spend engaged in **Private Practice** in such Oregon law office locations is greater than 50% of the time **You** engage in **Private Practice** in all law office locations when measured over the course of the 12 months prior to January 1st of each year. If **You** do not have a law office, **Your Principal Office** is in Oregon if: **You** reside in Oregon; or, if **You** reside outside Oregon but are not an active member of the bar of the jurisdiction where **You** reside.

B. Law Entities Legally Liable for Your Covered Activities

A **Law Entity** legally liable for any **Claim** against **You**, based on **Your Covered Activities** is also a **Covered Party** under this Plan. However, in the event the **Claim** also involves claims against other attorneys not covered under a PLF Plan, any defense or indemnity for the **Law Entity** under this Plan is limited to that portion of the **Law Entity's** legal liability that relates to **Your Covered Activities**.

A **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship that engages in the **Private Practice** of law in Oregon.

SECTION III – WHAT IS A COVERED ACTIVITY?

A. What Qualifies as a Covered Activity?

This Plan does not apply to all activities an attorney may engage in while practicing law. To fall within coverage, a **Claim** must arise out of a **Covered Activity**, subject to the following definitions, restrictions, and limitations, and all applicable exclusions in this Plan.

A **Covered Activity** is an error, omission, negligent act, or breach of duty committed in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**, as limited below, by:

- a. **You**;
- b. Another attorney for whose conduct **You** are legally liable, in **Your** capacity as an attorney, but only if the attorney was covered under a PLF Plan at the time of the act, error, omission, negligent act, or breach of duty; or
- c. **Your Non Attorney** employee, for whose conduct **You** are legally liable in **Your** capacity as an attorney, but only to the extent such employee was assisting **You** in providing **Professional Legal Services** or **Special Capacity Services**. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree but are not engaged in the practice of law in Oregon or in any other state.

B. What Are Professional Legal Services?

Professional Legal Services are legal services or legal advice provided in a **Covered Party's** capacity as an attorney in **Private Practice**, including services a **Covered Party** provides as a mediator or arbitrator.

Professional Legal Services do not include activities such as, but not limited to, the following:

- a. Any conduct in carrying out the commercial or administrative activities associated with practicing law, including but not limited to activities such as collecting fees or costs, guaranteeing a client will pay third party vendors or service providers such as court reporters, depositing, endorsing, or otherwise transferring negotiable instruments, depositing or withdrawing any money or other instruments into or from trust accounts or other bank accounts, any activities relating to or arising from the receipt, transmittal, or negotiation of counterfeit or fraudulent checks or instruments, or any activities that require no specialized skill or training, such as paying bills on time or not incurring unnecessary expenses;
- b. Business-related activities or services, including operating, managing, or controlling any property, business property, business, or institution in a manner similar to an owner, officer, director, partner, or shareholder, whether as a trustee or otherwise;
- c. Activities as an officer, director, partner, employee, shareholder, member, or manager of any entity except a **Law Entity**;
- d. Activities on any board, including but not limited to serving on the board of trustees of a charitable, educational, or religious institution, or a real estate or other investment syndication;
- e. Serving as trustee for the liquidation of any business or institution, or as trustee for the control of a union or other institution; or
- f. Non-legal services such as architectural, engineering, accounting, lobbying, marketing, advertising, trade services, public relations, real estate appraisal, real estate development, brokerage services, or other such services.

C. Special Capacity Services

Special Capacity Services provided by a **Covered Party**, arising out of a **Special Capacity Relationship**, are **Covered Activities** but only with respect to a **Claim** made by or for the benefit of a beneficiary of the **Special Capacity Relationship** and provided such **Claim** does not arise as a result of a claim by a third party relating to business activities or services provided by the **Covered Party** in the course of the **Special Capacity Relationship**.

Special Capacity Relationship means the **Covered Party** is formally named or designated to act in the capacity of a Personal Representative, Administrator, Conservator, Executor, Guardian Ad Litem, Special Representative pursuant to ORS 130.120 or a successor statute, or a Trustee administering a formal trust instrument for the benefit of a beneficiary.

Special Capacity Services means certain services commonly provided by an attorney in the course of a **Special Capacity Relationship** for the purposes of administering an estate or trust in accordance with applicable law and/or performing the legally required duties and obligations owed to beneficiaries of **Special Capacity Relationships**. **Special Capacity Services** do not include:

- a. Business-related services, including but not limited to operating, managing, or controlling any property, business property, business, or institution, whether owned by the estate or trust or otherwise, in a manner similar to an owner, officer, director, partner, or shareholder; or
- b. Services provided by a **Covered Party** that generally fall within the scope of services commonly provided by another type of professional such as an accountant, tax professional, financial planner or advisor, appraiser, architect, engineer, surveyor, real estate agent, or other such professional, or by a person in another trade or occupation such as a contractor, landscaper, gardener, caregiver, caretaker, housekeeper, or similar service provider.

SECTION IV – WHAT IS THE APPLICABLE COVERAGE PERIOD?

A. Date of Claim

Subject to Subsection IV B, the **Coverage Period** in effect on the earliest of the following dates applies to a **Claim** or matter:

1. The date a lawsuit is first filed, or an arbitration or alternative dispute resolution proceeding is first initiated, against a **Covered Party** under this Plan;
2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;
3. The date notice of a **Claim** is received by any **Covered Party** under this Plan;
4. The date the PLF receives notice of a **Claim** against a **Covered Party** under this Plan;
5. The date the PLF opens a file in order to take steps and/or make expenditures for a matter that is not a **Claim**, for the purpose of investigation, mitigation, review, or prevention of any potential **Claim** against a **Covered Party** under this Plan; or
6. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purpose of obtaining coverage under a later Plan.

B. Special Rule Regarding Related Claims

If any **Claim** against a **Covered Party** is **Related** to one or more **Related Claim(s)**, the **Coverage Period** in effect on the earliest of the following dates applies to the **Claim**:

1. The date a lawsuit was first filed, or an arbitration or alternative dispute resolution proceeding was initiated, with respect to the earliest of the **Related Claims**;
2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
3. The date a **Covered Party**, under this Plan, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, received notice of the earliest **Related Claim**;
4. The date the PLF received notice of the earliest **Related Claim**; or
5. The date a **Covered Party**, under this Plan, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, first became aware that a claimant intended to make the earliest **Related Claim**, but the claimant was delaying assertion of the **Claim**, or the **Covered Party** was delaying notice of such intent to make a **Claim**, for the purpose of obtaining coverage under a later Plan.

However, if **You** did not have a PLF Plan in effect on the date applicable to the earliest **Related Claim** pursuant to this subsection IV B, and **You** have no other insurance from any source that is applicable to the **Claim**, regardless of whether the available limits of such policy are sufficient to cover liability for the **Claim**, any applicable **Coverage Period** for the **Related Claim** against **You** is determined using the method set forth in Section IV A.

SECTION V – WHAT ARE RELATED CLAIMS?

A. Related Claims

Two or more **Claims** are **Related** when they are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. A **Claim** against **You** may be **Related** to another **Claim(s)** against **You** and/or to a **Claim(s)** against other attorneys covered under other PLF Plans. If **Claims** are **Related**, special rules, set forth in Section VII C, govern the total amount the PLF will pay in defense and indemnity of all such **Claims**.

B. General Examples

General examples of **Related Claims** include, but are not limited to, the following:

1. Secondary or dependent liability. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral are **Related** to the **Claims** on which they are based.
2. Same transaction or occurrence. Multiple **Claims** arising out of the same transaction or occurrence or series of transactions or occurrences are **Related**. However, provided the **Claims** do not also fall within one of the other categories in this Section V B, the PLF will not treat the **Claims** as **Related** if: (a) the participating **Covered Parties** acted independently of one another; (b) they represented different clients or groups of clients whose interests were adverse; and (c) the claimants do not rely on any common theory of liability or damage.
3. Alleged scheme or plan. If claimants tie together different acts as part of an alleged overall scheme or operation, then the **Claims** are **Related**.
4. Actual pattern or practice. Even if a scheme or practice is not alleged, if **Claims** arise from a method, pattern, or practice in fact used or adopted by one or more **Covered Parties** or **Law Entities** representing multiple clients in similar matters, such **Claims** are **Related**.
5. One loss. When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses, then the **Claims** are **Related**.
6. Class actions. All **Claims** alleged as part of a class action or purported class action are **Related**.

For the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to which **Claims** are considered to be **Related**, and subject to the special rules regarding limits under Section VII C, examples illustrating the PLF's intent, not intended to be exhaustive, are as follows:

Example 1: Secondary or Dependent Liability – Attorney A is an associate in a firm and commits malpractice. **Claims** are made against Attorney A, various attorneys who were partners in the firm at the time of the malpractice, and the firm. Even if Attorney A and some of the other lawyers are at different firms at the time of the **Claim**, all **Claims** are **Related**.

Example 2: Same Transaction, Occurrence, or Series of Transactions or Occurrences – Attorney A writes a tax opinion for an investment offering. Attorneys B and C, with a different law firm, assemble the offering circular. In 2010, Investors 1 and 2 bring **Claims** relating to the offering. Investor 3 brings a **Claim** in 2011. **Claims** against all attorneys and firms, by all three investors, are **Related**.

Example 3: Independent Representation of Adverse Clients Where There Is No Common Theory of Liability or Damage – Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A's and B's **Claims** are not **Related**.

Example 4: Same Transaction, Occurrence, or Series of Transactions or Occurrences/One Loss – An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel, its ERISA attorney, the owner and his attorney, and the plans' former attorney, contending there were improprieties in due diligence, the form of the agreements, and the amount and value of shares issued. The defendants file cross-claims. All **Claims** against the four attorneys are **Related** because they arise out of the same transactions or occurrences. The three necessary elements of the exception described in Section V B 2 are not satisfied because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Even if the exception in Section V B 2 did apply, however, the **Claims** would still be **Related** under Section V B 5 because they involve one loss.

Example 5: Claimants Allege Overall Scheme or Operation – Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. These **Claims** are all **Related** because, as is often the case in securities claims, the claimants have tied together different acts as part of an alleged overall scheme or operation.

Example 6: Actual Pattern or Practice – Attorneys A, B, and C in the same firm represent a large number of asbestos clients over several years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation. Plaintiffs do not allege a common scheme or plan, but because the firm in fact operated a firm-wide formula for handling the cases, these **Claims** are **Related** based on the **Covered Parties'** own pattern or practice.

Example 7: Successive or Collective Errors – Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice but misses the statute of limitations. Clients sue all three attorneys. All **Claims** are **Related**.

Example 8: Class Action or Purported Class Action – Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All **Claims** are **Related**.

SECTION VI – WHAT IS EXCLUDED FROM COVERAGE?

1. **Fraudulent Claims.** This Plan does not apply to any **Claim** in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, has participated in any fraud or collusion with respect to the **Claim**.
2. **Wrongful Conduct.** This Plan does not apply to any **Claim** based on or arising out of:
 - a. any criminal act or conduct;
 - b. any knowingly wrongful, dishonest, fraudulent, or malicious act or conduct;
 - c. any intentional tort; or
 - d. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any **Covered Party** who did not commit or participate in any acts or conduct set forth in subsections (a) through (d), had no knowledge of any such acts or conduct at the time they occurred, and did not acquiesce or remain passive after becoming aware of such acts or conduct.

3. **Disciplinary Proceedings.** This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.
4. **Punitive Damages, Sanctions, or Certain Fee Awards.** This Plan does not apply to:
 - a. The part of any **Claim** seeking punitive, exemplary, or statutorily enhanced damages against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable;
 - b. Any **Claim** for or arising out of the imposition of attorney fees, costs, fines, penalties, or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law. However, with respect to any sanction awarded only against the client, this subsection (b) does not apply if: the **Covered Party** establishes that the sanction was caused by mere negligence on the part of the **Covered Party** and on the part of anyone for whose conduct a **Covered Party** is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct, or misrepresentation on the part of the **Covered Party**, or on the part of anyone for whose conduct a **Covered Party** is legally liable; or
 - c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.
5. **Failure to Pay Lien.** This Plan does not apply to any **Claim** based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any **Covered Party** or to anyone for whose conduct a **Covered Party** is legally liable, prior to the payment of the funds to a client or any person or entity other than the rightful lien-holder.
6. **Business Interests.** This Plan does not apply to any **Claim** relating to or arising out of any business enterprise:
 - a. In which **You** are a general partner, managing member, or employee, or in which **You** were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;
 - b. That is controlled, operated, or managed by **You**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by **You** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
 - c. In which **You** either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) **You**, those controlled by **You**, **Your** spouse, parent, stepparent, child, sibling, or any member of **Your** household, and those with whom **You** are regularly engaged in the practice of law, collectively own, or previously owned, an interest in the business enterprise of less than 10%.
7. **Partner and Employee Exclusion.** This Plan does not apply to any **Claim** made by:
 - a. A present, former, or prospective law partner, employer, or employee of a **Covered Party**, or of anyone for whose conduct a **Covered Party** is legally liable; or
 - b. A present, former, or prospective officer, director, or employee of a professional corporation in which a **Covered Party**, or in which any attorney for whose conduct a **Covered Party** is legally liable, is or was a shareholder.

This Exclusion 7 does not apply if the **Claim** arises solely out of conduct in an attorney-client capacity for a person or entity listed in subsections (a) and (b).

8. **Business Transaction with Client.** This Plan does not apply to any **Claim** based on or arising out of any business transaction in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.

9. **Investment Advice.** This Plan does not apply to any of the following **Claims** or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:

- a. Any **Claim** for investment losses, or for any damages arising from or relating to such losses, as a result of any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.

This subsection (a) does not apply, however, to **Claims** made by a purchaser of securities for losses that arise only from **Professional Legal Services** provided to a seller of securities, provided no **Covered Party**, nor any attorney for whose conduct a **Covered Party** is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.

- b. Any **Claim** arising from any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any **Covered Party** for the **Covered Party** or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.
- c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of **Special Capacity Services**.

10. **Law Practice Business Activities or Benefits Exclusion.** This Plan does not apply to any **Claim**:

- a. For any amounts paid, incurred, or charged by any **Covered Party** as fees, costs, or disbursements (or by any **Law Entity** with which any **Covered Party** was associated at the time the fees, costs, or expenses were paid, incurred, or charged), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off, or otherwise.
- b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any **Covered Party**, or any **Law Entity** with which any **Covered Party** is now associated or was associated at the time of the conduct giving rise to the **Claim**; or
- c. For damages or the recovery of funds or property that have benefitted or will directly or indirectly benefit any **Covered Party**.

In the event the PLF defends any **Claim** or **Suit** that includes any claim within the scope of this exclusion, the **Covered Party** is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).

This exclusion does not apply to the extent a **Claim** is based on an act, error, or omission that eliminates, reduces, or prejudices a client's right or ability to recover fees, costs, or expenses from an opposing party.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the scope of Exclusion 10:

***Example 1:** Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A, which allegedly were excessive and negligently incurred by Attorney A. Under subsection (a), there is no coverage for the claim.*

Example 2: Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill but later sues Attorney B to recover the fees paid. Under subsection (a), there is no coverage for the claim.

Example 3: Attorney C writes a demand letter to Client for unpaid fees and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under subsection (b), there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.

Example 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under subsection (b), there is no coverage for the claim.

Example 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees, and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under subsection (c), there is no coverage for the claim. The same is true if Attorney E receives the stock as a fee and is sued later for recovery of the stock or damages.

11. **Family Member and Ownership Exclusion.** This Plan does not apply to any **Claim** based on or arising from any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having provided or failed to provide:
- Professional Legal Services** to any person or entity that is his or her own **Family Member** or **Family Business** at the time any such services are provided or fail to be provided; or
 - Special Capacity Services** to a trust or estate: (i) if the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such **Special Capacity Services** are provided, or fail to be provided, any **Family Member** or **Family Business** of that **Covered Party**, or of the person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate.

Family Member(s) means spouse, parent, adoptive parent, parent-in-law, stepparent, grandparent, child, adopted child, stepchild, grandchild, son-in-law, daughter-in-law, sibling, adopted sibling, stepsibling, half sibling, brother-in-law, sister-in-law, or any member of the **Covered Party's** household and, if the household member is a spousal equivalent of the **Covered Party**, the **Family Members** of any such person.

Family Business means a business entity in which the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, and/or the **Family Members** of such **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, collectively or individually, have a controlling interest.

This Exclusion 11 does not apply to **Professional Legal Services** or **Special Capacity Services** an attorney provides to another attorney's **Family Member** or **Family Business**.

12. **Benefit Plan Fiduciary Exclusion.** This Plan does not apply to any **Claim** arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having acted as a fiduciary under any employee retirement, deferred benefit, or other similar plan.
13. **Notary Exclusion.** This Plan does not apply to any **Claim** arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.
14. **Loss of Client Funds or Property/Certain Disbursements.** This Plan does not apply to any **Claim** against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable, relating to or arising from: conversion, misappropriation, improper commingling, negligent supervision of client funds or trust account property, including loss or reduction in the value of such funds or property, or the disbursement of funds, checks,

or other similar instruments deposited to a trust, escrow, or other similar account in which the deposit was not irrevocably credited to such account.

15. **General Tortious Conduct.** This Plan does not apply to any **Claim** for:
- a. Bodily injury, sickness, disease, mental anguish, emotional distress, or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act, or breach of duty in providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or
 - b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible, or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects the provision of **Professional Legal Services** or **Special Capacity Services**.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the scope of Exclusion 15:

***Example 1:** Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C. Following the completion of the matter, the documents are lost or destroyed. Client makes a claim for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this claim because the loss of documents did not adversely affect the professional services, which had already been completed.*

***Example 2:** Client gives Attorney B a defective ladder from which Client fell, to be used as critical evidence in his personal injury case. Attorney B loses the ladder and cannot use it as evidence, causing a defense verdict. A claim for the value of the lost personal injury case would not be excluded.*

***Example 3:** A client makes a claim for bodily injury or emotional distress based on allegations that an attorney engaged in sexual contact with the client, the client suffered injury while riding in an attorney's car, or that the client slipped on the floor in an attorney's office. As an initial matter, none of these claims arise out of a **Covered Activity**. They are also excluded by Exclusion 15 a, and may also be subject to other exclusions.*

***Example 4:** An attorney negligently fails to inform a client of a court date in a criminal matter. As a result, the client fails to appear and is arrested, jailed, and injured by another inmate. A claim against the attorney alleging damages arising from bodily injury and emotional distress is not excluded by Exclusion 15 a.*

16. **Harassment and Discrimination.** This Plan does not apply to any **Claim** based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual orientation, disability, pregnancy, national origin, marital status, or any other basis.
17. **Patent Exclusion.** This Plan does not apply to any **Claim** based upon or arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.
18. **Contractual Obligation Exclusion.** This Plan does not apply to any **Claim**:
- a. Based on or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a **Covered Party** or by someone for whose conduct any **Covered Party** is legally liable, unless the **Claim** arises out of **Special Capacity Services**, and the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, signed the bond or agreement solely in a representative capacity arising from the **Special Capacity Relationship**;
 - b. For liability based on an agreement or representation, if the **Covered Party** would not have been liable in the absence of the agreement or representation; or

- c. To the extent the **Claim** is based on an actual or alleged promise to obtain a certain outcome or result if the **Covered Party** would not have been liable in the absence of such a promise.

The following illustrative examples, not intended to be exhaustive, are provided to assist a **Covered Party** or court in interpreting the PLF's intent as to the scope of Exclusion 18:

Example 1: Attorney A personally guarantees that a client will secure funding for a real estate development. Any claim against Attorney A arising from the guarantee is not covered.

Example 2: Attorney B enters into an agreement with a client that if there is any dispute arising from the representation, the prevailing party will be able to recover attorney fees. The client sues Attorney C for malpractice and prevails. The contractually based attorney fee award is not covered because it would not exist in the absence of the agreement.

Example 3: Attorney C promises a plaintiff that he will recover at least \$200,000 in a lawsuit but does not achieve this result. To the extent the client bases any claim against Attorney D solely on a promise to obtain a particular outcome, rather than on negligence in failing to meet the applicable standard of care, there is no coverage for the breach of contract claim.

19. **Bankruptcy Trustee Exclusion.** This Plan does not apply to any **Claim** arising out of activity as a bankruptcy trustee.

20. **Confidential or Private Information/Computer Systems.** This Plan does not apply to any **Claim** arising from:

- a. Any loss of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, or any access or potential access by third parties, disclosure to third parties, or publication of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, whether or not such information was in electronic form or in paper form;
- b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security of information referenced in subsection (a), including but not limited to failure to report the loss of such information; or
- c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by a computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.

Personally Identifiable Non-Public Information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state, or foreign law or regulation, if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information. This includes, but is not limited to, certain medical or health care information, driver's license or state identification information, social security numbers, credit information, or financial account information.

Third Party Corporate Information means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report, or other item of information of a third party that is not available to the general public.

This Exclusion 20, however, does not apply to a **Claim** to the limited extent it arises solely out of immediate inability to provide **Professional Legal Services** or **Special Capacity Services** caused by the sudden and unexpected loss of documents or information necessary to such services provided: (i) such loss materially and adversely affected the ability to provide such services; and (ii) following the discovery of any such loss of documents or information, the **Covered Party**, at the **Covered Party's** own expense, took any and all reasonable

and necessary steps as were possible to restore, recover, replace, or obtain such documents or information before the time the services had to be provided.

If the PLF agrees to defend a **Suit** that includes a **Claim** falling within this exclusion, and/or a **Claim** falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs, or any similar costs

SECTION VII – LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE, AND SPECIAL LIMITS REGARDING RELATED CLAIMS

A. Limit of Coverage

The **Limit of Coverage** for the **Coverage Period** of this Plan is \$300,000. This is a maximum aggregate limit applicable to any and all **Claims** or matters to which this Plan applies. The making of multiple claims or claims against more than one **Covered Party** will not increase the **Limit of Coverage**, which is reduced by the following payments arising from **Claims** or matters to which the **Coverage Period** of this Plan applies:

1. All **Claims Expense** paid by the PLF on behalf of any **Covered Party** under this Plan that is in excess of any applicable **Claims Expense Allowance**; and
2. The PLF's payment, on behalf of any **Covered Party** under this Plan, of any and all amounts relating to settlements, judgments, or any other indemnity payments arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this Plan.

B. Claims Expense Allowance

In addition to the **Limit of Coverage**, this Plan also provides a separate **Claims Expense Allowance**, meaning an additional allowance in the maximum aggregate amount of \$50,000, applicable to the investigation and/or defense of any and all **Claims** against all **Covered Parties** under this Plan, subject to Section VII C below. The **Claims Expense Allowance** may be applied only to **Claims Expenses**, and not to any settlements, judgments, or any other indemnity payments.

C. Special Rules and Limits for Related Claims

If **Your** Plan and one or more other Plans issued by the PLF to other attorneys apply to **Claims** that are **Related**, then regardless of the number of claims, claimants, clients, attorneys, or **Law Entities** involved, the PLF will not pay more than a maximum total of \$300,000, plus a maximum of one \$50,000 **Claims Expense Allowance** to defend and/or indemnify all parties covered under this or any other PLF Plan regarding all such **Related Claims**. This is subject only to the exception stated below regarding **Claims Expense Allowances**. In addition, the portion of this total maximum **Related Claim** limit available to **You** cannot exceed the amount of the available remaining limit of **Your** Plan in effect during the **Coverage Period** that applies to the **Related Claim(s)** against **You**.

The total maximum limit applicable to **Related Claims** is reduced as the PLF makes expenditures on **Related Claims**, whether on **Your** behalf, or on behalf of other attorneys or **Law Entities** against whom **Related Claims** are made. After the total applicable limit for **Related Claims** and any **Claims Expense Allowance** available to **You** has been exhausted, the PLF is not obligated to investigate, defend, pay, or settle any **Related Claim** against **You**.

Under the following circumstances, the PLF may grant more than one **Claims Expense Allowance** with respect to **Related Claims**: (1) the **Related Claims** allegedly arise from **Covered Activities** by two or more **Law Entities**; (2)

the **Law Entities** were separate entities at the time of the alleged errors, omissions, negligent acts, or breaches of duty; and (3) a **Covered Party** requests and, in the sole judgment of the PLF, should be entitled to separate defense counsel. Not more than one separate **Claims Expense Allowance** per **Law Entity**, or group of **Law Entities** practicing together as a single firm, will be granted. Any such separate allowance may be used only for the defense of **Claims** arising from the **Covered Activities** of the **Law Entity** or group of Entities to which the separate allowance applies. If the **Claims Expense Allowance** for the applicable **Coverage Period** has already been depleted or exhausted by other **Claims** or matters, the amount of the **Claims Expense Allowance** will be limited to whatever remains of the **Claims Expense Allowance** for that **Coverage Period**.

For the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the meaning of Section VII C, illustrative examples, not intended to be exhaustive, are as follows:

Example 1: In 2009, Attorney A, with Firm 1, assists a client in setting up an LLC to obtain investors for real estate development projects, also advising the client as to applicable securities laws requirements. In 2011, Attorneys B and C, with Firm 2, assemble information the LLC provides to investors. In 2013, Investor W brings securities claims against Attorneys B and C. The PLF incurs \$50,000 in **Claims Expense** relating to Investor W's **Claims** against Attorneys B and C and settles the **Claims** against them for a total of \$250,000—\$125,000 for Attorney B and \$125,000 for Attorney C.

In 2014, following the settlement of Investor W's **Claims** against Attorneys B and C, Investor X brings a securities claim against Attorneys A, B, and C regarding Investor X's investment in the LLC. Because the **Claims** by Investor X are **Related** to the previous **Claims** against Attorneys B and C, this **Claim** relates back to the 2013 Plans issued to Attorneys A, B, and C.

There was another completely unrelated **Claim** against Attorney A in 2013, but the PLF successfully defended Attorney A, using his entire \$50,000 **Claims Expense Allowance** for 2013. Although Attorney A has not used his \$300,000 limit for 2013, because the PLF has already spent \$250,000 settling the **Related Claims** against Attorneys B and C, all the attorneys, collectively, now have a total limit of \$50,000, under their 2013 Plans, to respond to the **Claim** by Investor X. Because Attorney A has already used his **Claims Expense Allowance** for 2013, he does not have another **Claims Expense Allowance** for this **Claim**. There is no additional **Claims Expense Allowance** available for Attorneys B and C because they are entitled to only one shared **Claims Expense Allowance** regarding the **Related Claims**, and this was already spent on the **Related Claim** by Investor W.

Example 2: Same facts as in Example 1, except that the previous unrelated 2013 **Claim** against Attorney A was not successfully defended. The PLF spent Attorney A's \$50,000 **Claims Expense Allowance**, plus \$275,000 settling the unrelated 2013 **Claim** against Attorney A. Under this scenario, there is a total maximum limit of \$25,000 for Attorney A to respond to the **Claim** by Investor X. Although the \$50,000 left after settling the **Claim** by Investor W is available collectively to A, B, and C, no more than \$25,000 of this amount can be used for Attorney A because that is all that is remaining of his 2013 limit. Assuming \$25,000 is spent to settle the Investor X **Claim** against Attorney A, there is \$25,000 remaining to defend or indemnify Attorneys B and C against Investor X.

Example 3: Same facts as in Example 1, except that \$300,000 is spent settling Investor W's claim against Attorneys B and C. Attorneys B and C have exhausted both their 2013 **Limit of Coverage** and their 2013 **Claims Expense Allowance**. Attorney A exhausted his 2013 **Claims Expense Allowance** to defend an unrelated **Claim**. The PLF has already paid the most it will pay regarding the **Related Claims**. As a result, there is nothing left to defend or indemnify Attorneys A, B, or C against the **Claim** by Investor X under any PLF Primary Coverage Plan.

Example 4: Same facts as Example 1, except the PLF settles Investor W's **Claim** against Attorneys B and C for \$30,000, without incurring any **Claims Expense** for them, and Attorney A has used all but \$5,000 of his 2013 limit, as well as his **Claims Expense Allowance**, for an earlier unrelated **Claim**. Under this scenario, there is a maximum total limit of \$270,000 to respond to the **Claim** by Investor X against all three attorneys, but only \$5,000 of this amount is available to Attorney A because that is the limit remaining under his 2013 Plan. Attorney A has no **Claims Expense Allowance** remaining. Attorneys B and C, however, have a shared \$50,000 **Claims Expense Allowance** for their defense against the **Claim** by Investor X.

Example 5: Same facts as Example 1, except Attorney A already spent both his entire 2013 **Claims Expense Allowance**, plus his entire 2013 limit on an unrelated **Claim**. Attorney A has no coverage for the **Claim** by Investor X under the PLF Primary Coverage Plan.

Example 6: Attorney A performed **Covered Activities** for a client while Attorney A was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 **Limit of Coverage** and two **Claims Expense Allowances**. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate **Law Entity** from the firm at which she worked. Accordingly, two, not three, **Claims Expense Allowances** are potentially available.

Example 7: Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case that he concluded involved special issues requiring the expertise of Attorney D from another firm. D and C work together in representing the client and commit errors in handling the case. Two **Claims Expense Allowances** are potentially available. There are only two separate firms – the BC partnership and D's firm.

SECTION VIII – DUTIES OF COVERED PARTIES

A. Notice of Claims, Suits, and Circumstances

1. The **Covered Party** must immediately notify the PLF of any **Suit** filed against the **Covered Party** and deliver to the PLF every demand, notice, summons, or other process received.
2. If the **Covered Party** receives notice of a **Claim**, or becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Plan, the **Covered Party** must give written notice to the PLF as soon as practicable of: the specific act, error, or omission; any damages or other injury that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
3. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** that otherwise would require notice from the **Covered Party** under subsection 1 or 2 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

B. Assistance and Cooperation in Defense

As a condition of coverage under this Plan, the **Covered Party** will, without charge to the PLF, cooperate with the PLF and will:

1. Provide to the PLF, within 30 days after written request, narrative statements or sworn statements providing full disclosure concerning any **Claim** or any aspect thereof;
2. Attend and testify when requested by the PLF;
3. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any **Claim** against the **Covered Party**;
4. Execute authorizations, documents, papers, loan receipts, releases, or waivers when requested by the PLF;
5. Submit to arbitration of any **Claim** when requested by the PLF;
6. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all **Claims**;

7. Not communicate with any person, other than the PLF or an insurer for the **Covered Party**, regarding any **Claim** that has been made against the **Covered Party**, after notice to the **Covered Party** of such **Claim**, without the PLF's written consent; and
8. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any **Claim** against the **Covered Party**.

C. No Voluntary Payments, Admissions, or Representations

No **Covered Party** can bind or prejudice the PLF with voluntary payments or admissions or representations. If a **Covered Party**, without the advance written consent of the PLF, voluntarily makes any payment, assumes any obligation or incurs any expense with respect to a **Claim**, makes any representation to a claimant that the claimant will be indemnified, or makes any representation as to the value or potential value of the **Claim**, any payment, obligation, expense, obligation to pay, or obligation to pay the represented amount will be the sole obligation of the **Covered Parties**, to be paid or satisfied at the sole cost and expense of the **Covered Parties**.

D. Protection of Subrogation Rights

To the extent the PLF makes any payment under this Plan, it will be subrogated to any **Covered Party's** rights against third parties to recover all or part of these sums. No **Covered Party** will take any action to destroy, prejudice, or waive any right of subrogation the PLF may have, and will, if requested, assist the PLF in bringing any subrogation action or similar claim. The PLF's subrogation or similar rights will not be asserted against any **Non Attorney** employee of a **Covered Party** who was acting in the course and scope of employment, except for claims arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

E. Assistance and Cooperation in Coverage Issues

1. Any party claiming coverage under this Plan has a duty and obligation to timely provide, upon the request of the PLF, accurate, complete, and truthful information relevant to any claimed right to coverage under this Plan.
2. In the event the PLF proposes, in writing, a settlement to be funded by the PLF but subject to the **Covered Party's** being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the **Claim** settled, the **Covered Party** must advise the PLF in writing that the **Covered Party** either agrees or objects to the PLF's proposal. The written response must be made by the **Covered Party** as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. The **Covered Party's** objection to the settlement waives any right to assert that the PLF should have settled the **Claim**.

SECTION IX – ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS

1. No legal action in connection with this Plan may be brought against the PLF unless all **Covered Parties** have fully complied with all the terms and conditions of the Plan.
2. Absent the PLF's express written consent, the PLF will not be obligated to make any indemnity payments until after the **Covered Party** has been held liable in a **Suit** on the merits, and all applicable coverage issues have been determined by Declaratory Judgment.
3. The bankruptcy or insolvency of a **Covered Party** does not relieve the PLF of its obligations under this Plan, nor deprive the PLF of any of its rights under this Plan.
4. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all of the **Limit of Coverage** toward settlement of a **Claim** before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Plan is not applicable to the **Claim**, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the **Covered Party** (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the **Claim**, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's **Limit of Coverage** before all applicable coverage issues have been fully determined.
5. This Plan is governed by the laws of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Plan. Any disputes as to the applicability, interpretation, or enforceability of this Plan, or any other issue pertaining to or arising out of any duties or provision of benefits under this Plan, between any **Covered Party** (or anyone claiming through a **Covered Party** or based on any actual or alleged right of direct action) and the PLF, whether any claim against the PLF is based in tort or in contract, is subject to Oregon law and will be tried in the Multnomah County Circuit Court of the State of Oregon, which will have exclusive jurisdiction and venue of such disputes at the trial level.
6. No person or entity may recover consequential damages for the PLF's breach of any provision in this Plan. Any damages recoverable for any such breach are strictly limited to those amounts a court rules would have been payable by the PLF, under the provisions of this Plan, if there had been no such breach.
7. The PLF has a right of subrogation and may bring a legal action to recover from a **Covered Party** under this Plan for damages it has paid regarding a **Claim** against another attorney or entity covered under this or another PLF Plan, subject to the following conditions:
 - a. If not for the PLF's right of subrogation, the **Covered Party** against whom recovery is sought could be responsible for contribution, indemnity, or otherwise to the person or entity on whose behalf the PLF's payment was made; and
 - b. The PLF's right of subrogation can be alleged based on a theory or theories for which there would not be coverage under this Plan for the **Covered Party** against whom recovery is sought.

In the circumstances outlined in this subsection 7, the PLF reserves the right to sue the **Covered Party**, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Plans issued by the PLF. However, this subsection will not entitle the PLF to sue the **Covered Party** if the PLF's alleged rights against the **Covered Party** are premised on a theory of recovery that would entitle the **Covered Party** to indemnity under this Plan if the PLF's action were successful.

The following examples, not intended to be exhaustive, illustrate the effect of Section IX 5:

Example 1: Attorney A engages in intentionally wrongful conduct in representing Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the **Claim** under his Plan, but Attorney B has coverage for her liability under her Plan. If the PLF pays the **Claim** under Attorney B's Plan, it has a right to sue Attorney A for the damages it paid.

Example 2: Same facts as the prior example, except that the PLF lends funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. The PLF has the right, pursuant to such an arrangement with Attorney B, to participate in her action against Attorney A.

SECTION X – SUPPLEMENTAL ASSESSMENTS

This Coverage Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, **You** agree to pay **Your** supplemental assessment to the PLF within 30 days of request. The PLF is authorized to make additional assessments against **You** for this **Plan Year** until all the PLF's liability for this **Plan Year** is terminated, whether or not **You** are a **Covered Party** under a Plan issued by the PLF at the time the assessment is imposed.

SECTION XI – RELATION OF PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If a **Covered Party** has valid and collectible insurance coverage or other source of indemnification that also applies to any loss or **Claim** covered by this Plan, the PLF will not be liable under the Plan until the limits of the **Covered Party's** insurance or other source of indemnification, including any applicable deductible, have been exhausted, unless such insurance or other source of indemnification is written only as specific excess coverage over the **Claims Expense Allowance** and **Limit of Coverage** of this Plan.

SECTION XII – WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Plan, nor will the terms of this Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.

SECTION XIII – AUTOMATIC EXTENDED REPORTING COVERAGE

1. If **You** terminate **Your** PLF coverage during this **Plan Year**, or do not obtain PLF coverage as of the first day of the next year following the expiration of this **Plan Year**, as of **Your** last day of PLF coverage, and until the date specified in subsection 2, **You** will automatically have extended reporting coverage under this Plan for future **Claims** made against **You**, provided such **Claims** are not based on activities that occurred after **Your** last day of PLF coverage. **Your** extended reporting coverage does not provide **You** with a renewed **Limit of Coverage** or **Claims Expense Allowance**. The remaining **Limit of Coverage** and **Claims Expense Allowance** available under this Plan, after subtracting all amounts spent by the PLF regarding any **Claims** or matters to which this Plan applied or applies, as of the date any such future **Claim** is made, will be the maximum amount available for the defense and indemnity of any such **Claim**.
2. If **You** terminate **Your** PLF coverage during this **Plan Year** and return to PLF coverage later in the same year, the extended reporting coverage granted to **You** under subsection 1 will automatically terminate as of the date **You** return to PLF coverage, the coverage provided under this Plan will be reactivated, and **You** will not receive a new **Limit of Coverage** or **Claims Expense Allowance** on **Your** return to coverage.

SECTION XIV – ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment without the express written consent of the PLF, voids any coverage under the Plan.

APPENDIX A – LIST AND INDEX OF DEFINED TERMS

1. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Section I A, p.1)
2. **Claims Expense** has the meaning set forth in Section I B 3. (p. 2)
3. **Claims Expense Allowance** means the separate allowance for aggregate **Claims Expense** for all **Claims** as provided for in Section VII B. (p. 13)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading, “Coverage Period.” (¶1, p. 1)
5. **Covered Activity** has the meaning set forth in Section III A. (p. 3)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II. (p. 2)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; setoff of any fees, costs, or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Section I A, p. 1)
8. **Family Business** has the meaning set forth in Exclusion 11. (p. 10)
9. **Family Member(s)** has the meaning set forth in Exclusion 11. (p. 10)
10. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Section II B, p. 3)
11. **Legally Obligated** has the meaning set forth in Section I A. (p. 1)
12. **Limit of Coverage** has the meaning set forth under Section VII A. (p. 13)
13. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree but are not engaged in the practice of law in Oregon or any other state. (Section III A, p. 3)
14. **Personally Identifiable Non-Public Information** has the meaning set forth in Exclusion 20. (p. 12)
15. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued. (¶1, p. 1)
16. “PLF” means the Professional Liability Fund of the Oregon State Bar. (¶1, p.1)
17. **Private Practice** has the meaning set forth in Section II A. (p. 2)
18. **Principal Office** has the meaning set forth in Section II A. (p. 3)
19. **Professional Legal Services** has the meaning set forth under Section III B. (p. 4)
20. **Related Claims** has the meaning set forth in Section V. (p. 6)
21. **Special Capacity Relationship** has the meaning set forth in Section III C. (p. 4)
22. **Special Capacity Services** has the meaning set forth in Section III C. (p. 4)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding only if the PLF expressly consents to it. (Section I B, p. 1)
24. **Third Party Corporate Information** has the meaning set forth in exclusion 20. (p. 12)
25. **You** and **Your** refer to the Named Party shown in the Declarations. (¶1, p. 1)



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