

settlement payments incurred in connection with the investigations has forced FORBA to file this action for breach of contract and declaratory judgment.

Parties

2. Plaintiff FORBA, a wholly owned subsidiary of Small Smiles Holding Company, LLC (“SSHC”), is a limited liability company organized under the laws of the State of Delaware and having its principal place of business at 618 Church Street, Suite 520, Nashville, Tennessee 37219. FORBA and its officers and directors are insureds under the Zurich policies at issue in this case. In September 2006, FORBA acquired the assets of a dental management business, including 50 management services agreements with dental centers across the country (the “Small Smiles Dental Centers”).

3. Defendant Zurich, upon information and belief, is a corporation organized under the laws of the State of New York, with its principal place of business at 1400 American Lane, Schaumburg, Illinois 60196. Zurich is a liability insurance company engaged in the business of selling insurance contracts covering commercial entities such as Plaintiff in the State of Tennessee and elsewhere.

Jurisdiction and Venue

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because Plaintiff and Defendant are citizens of different states and the matter in controversy exceeds \$75,000, excluding interest and costs. More particularly, Plaintiff is a citizen of Tennessee and Delaware, and Defendant, upon information and belief, is not a citizen of Tennessee or Delaware.

5. This Court has personal jurisdiction over Zurich pursuant to Tennessee Code Annotated section 20-2-201 because Zurich, upon information and belief, conducts

business in the State of Tennessee and within this district, including the business of entering into insurance contracts with Tennessee corporations, and the cause of action arises in Tennessee.

6. Venue is proper in this district under 28 U.S.C. §§ 1391 (a) and 1391(c).

FACTUAL ALLEGATIONS

7. Plaintiff incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1 – 6 above.

The Federal and State Investigations

8. In November 2007, FORBA and certain Small Smiles Dental Centers that it manages became the subject of a series of negative media reports, including a segment on Good Morning America.

9. Shortly thereafter, FORBA and certain Small Smiles Dental Centers received a series of claims, in the form of subpoenas, civil investigative demands, and other formal process, related to investigations initiated by the Office of the Inspector General, U.S. Department of Health and Human Services (“OIG-HHS”), the United States Department of Justice, and various State Attorneys General and State Boards of Dental Examiners.

10. The governmental investigations focused on allegations that FORBA, certain Small Smiles Dental Centers, and certain individuals committed wrongful acts in connection with claims for dental services submitted for payment to Medicaid and the State Children’s Health Insurance Program. The allegations under investigation included whether FORBA engaged in the following wrongful conduct beginning in September 2006:

(a) “causing claims to be submitted by the Centers for reimbursement for performing pulpotomies that were not medically necessary and/or were performed in a manner that did not meet professionally recognized standards of care;”

(b) “causing claims to be submitted by the Centers for reimbursement for placing crowns that were not medically necessary and/or were performed in a manner that did not meet professionally recognized standards of care;”

(c) “causing claims to be submitted by the Centers for reimbursement for the administration of anesthesia (including, without limitation, nitrous oxide) that was not medically necessary, that was performed in a manner that did not meet professionally recognized standards of care, and/or was administered by an unlicensed, non-certified, or otherwise unauthorized individual;”

(d) “causing claims to be submitted by the Centers for reimbursement for extractions that were not medically necessary and/or were performed in a manner that did not meet professionally recognized standards of care;”

(e) “causing the Centers to fail to obtain informed consent for certain dental procedures and services;”

(f) “causing claims to be submitted by the Centers for reimbursement for fillings that were not medically necessary and/or were performed in a manner that did not meet professionally recognized standards of care;”

(g) “causing claims to be submitted by the Centers for reimbursement for sealants that were not medically necessary and/or were performed in a manner that did not meet professionally recognized standards of care;”

(h) “causing claims to be submitted by the Centers for reimbursement for radiographs (i.e., x-rays) that were not medically necessary, were performed in a manner that did not meet professionally recognized standards of care, and/or were administered by an unlicensed, non-certified, or otherwise unauthorized individual;” and

(i) “causing claims to be submitted by the Centers for reimbursement for behavior management techniques, including without limitation those techniques involving a papoose board, that were not medically necessary and/or were performed in a manner that did not meet professionally recognized standards of care.”

11. FORBA denied the allegations, and FORBA incurred substantial costs in defending against the government investigations.

12. On January 15, 2010, FORBA signed a settlement agreement with the United States Department of Justice and OIG-HHS whereby FORBA agreed to make a structured settlement payment of \$14,285,644.75 (plus interest) to the United States, in exchange for a release of claims against it, its current officers and directors, its parents, subsidiaries, and affiliates, and the Small Smiles Dental Centers arising from the alleged wrongful conduct. FORBA also agreed to pay attorneys’ fees in the aggregate amount of \$182,183.52 to three relators that filed *qui tam* actions alleging wrongful acts on the part of FORBA, as well as other defendants. Given, among other things, the number of submitted claims potentially at issue and the continued costs and disruption of the investigations, the amount of the settlement was reasonable.

13. Pursuant to settlement agreements with each of the states and the District of Columbia, FORBA agreed to pay the aggregate amount of \$9,714,355.25 (plus interest) to Alabama, Arizona, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Nebraska, Nevada, New Hampshire, New Mexico, New York, Ohio, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia in exchange for a release of claims against it, its current officers and directors, its parents, subsidiaries, and affiliates, and the Small Smiles Dental Centers arising from the alleged wrongful conduct. Given, among other things, the number of submitted claims potentially at issue and the continued costs and disruption of the investigations, the amount of the settlement payments to the Medicaid Participating States was reasonable.

The Insurance Policies Covering Plaintiff

14. Zurich sold to SSHC a “Private Solutions-Enhanced” insurance policy covering SSHC, FORBA, the Small Smiles Dental Centers, and other insureds bearing policy number 9140750-00 and having a policy period of December 13, 2006 through December 13, 2007 (the “2006-2007 Policy”). The 2006-2007 Policy has an applicable limit of liability of \$10,000,000 incepting above a \$75,000 self-insured retention. A true and correct copy of the 2006-2007 Policy is attached to this Complaint as Appendix A.

15. The 2006-2007 Policy was renewed by Zurich under policy number 9140750-00 for the period December 13, 2007 through December 13, 2008 (the “2007-2008 Policy”). The 2007-2008 Policy also has an applicable limit of liability of \$10,000,000 incepting above a \$75,000 self-insured retention. A true and correct copy of

the 2007-2008 Policy is attached to this Complaint as Appendix B. The 2006-2007 Policy and the 2007-2008 Policy will be referred to herein collectively as the “Policies.”

16. The Policies contain a Company Reimbursement Coverage insuring agreement, which provides as follows:

The Insurer shall pay on behalf of the Company all Loss for which the Company grants indemnification to the Insured Persons, as permitted or required by law, and which the Insured Persons become legally obligated to pay on account of any Claim first made against them, individually or otherwise during the Policy Period or, if exercised, during the Extended Reporting Period, for a Wrongful Act taking place before or during the Policy Period.

17. The Policies contain a Company Liability Coverage insuring agreement, which provides, in pertinent part, as follows:

[T]he Insurer shall pay on behalf of the Company all Loss for which the Company becomes legally obligated to pay on account of any Claim first made against the Company during the Policy Period, or if exercised, during the Extended Reporting Period, for a Wrongful Act taking place before or during the Policy Period.

18. The Policies’ definition of “Company” includes FORBA and the Small Smiles Dental Centers.

19. The Policies define “Loss,” in pertinent part, to mean “damages, judgments, settlements, and Defense Costs,” and the Policies define “Claim” as:

- (1) a written demand for monetary damages or other relief;
- (2) a civil proceeding commenced by the service of a complaint or similar pleading;
- (3) a criminal proceeding commenced by the return of an indictment;

(4) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

against any Insured Person or, with respect to Insuring Agreement C., against the Company for a Wrongful Act, including any appeal therefrom.

20. The Policies also contain numerous other provisions and grants of insurance coverage for the benefit and protection of FORBA and the other insureds, for which Zurich was paid substantial premiums.

**Defendant's Refusal to Honor
Its Policy Obligations To Plaintiff**

21. The subpoenas, civil investigative demands, other formal process, and demands for monetary damages related to the government investigations were Claims within the meaning of the Policies.

22. The first of the Claims, in the form of a subpoena, was served in November 2007, within the policy period of the 2006-2007 Policy, and was timely reported by FORBA to Zurich within 60 days after the end of the policy period of the 2006-2007 Policy.

23. FORBA kept Zurich apprised of material events in the defense of the government investigations and also with respect to settlement discussions and responded fully to Zurich's requests for documents and other information.

24. Zurich has acknowledged to FORBA that the first subpoena was timely reported to Zurich under the 2006-2007 Policy and that -- if subpoenas constitute Claims for purposes of coverage -- then all subsequent subpoenas, civil investigative demands, other formal process, and demands for monetary damages therefore relate back and are

deemed to have been first made within the policy period of the 2006-2007 Policy.

Zurich, however, wrongfully has denied that subpoenas constitute Claims.

25. Zurich instead maintains that the notices of subpoenas, civil investigative demands, other formal process, and other information provided by FORBA to Zurich in February 2008 and thereafter were reports of circumstances that could give rise to a Claim or Claims, within the meaning of Section IV.B.6 of the 2007-2008 Policy. Zurich wrongfully contends that no Claim was made within the meaning of the Policies until the United States Department of Justice sent FORBA a draft settlement dated August 6, 2009 and that, as result, there is no coverage for the defense costs incurred by FORBA prior to August 6, 2009. Based upon its contention that the August 6, 2009 draft settlement was the first Claim made against the insureds, Zurich has advised FORBA that it considers such Claim to relate back to and to have been timely reported under the 2007-2008 Policy.

26. The defense costs incurred by FORBA and the settlement payments agreed to by FORBA to resolve the government Claims are in amounts that exceed the \$75,000 self-insured retentions contained in the Policies.

27. FORBA properly demanded that Zurich honor the promises made in the Policies and pay for the defense costs incurred by FORBA in connection with the government investigations and the settlement payments agreed to by FORBA to resolve the government investigations.

28. The Policies are insurance contracts pursuant to which Zurich was paid substantial premiums in exchange for providing broad insurance coverage to FORBA and other insureds for costs and losses arising from the defense and settlement of covered

Claims. Zurich wrongfully has refused to reimburse FORBA under either the 2006-2007 Policy or the 2007-2008 Policy for the defense costs incurred in connection with the government investigations and the settlement payments made and to be made to resolve the government investigations and wrongfully has repudiated its coverage obligations to FORBA.

COUNT I: BREACH OF CONTRACT

29. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1-28 above.

30. Zurich's refusal to pay for the defense costs incurred by FORBA in connection with the government Claims and for settlement payments made and to be made by FORBA to resolve the government Claims constitutes a wrongful repudiation of its coverage obligations under the 2006-2007 Policy and is a breach of the 2006-2007 Policy.

31. As a result of Zurich's breach of the 2006-2007 Policy, FORBA has sustained and will continue to sustain substantial damages, in an amount to be established at trial, for which Zurich is liable to FORBA.

32. Alternatively, to the extent that the government Claims relate back to the 2007-2008 Policy, Zurich's refusal to pay for the defense costs incurred by FORBA in connection with the government Claims and for settlement payments made and to be made by FORBA to resolve the government Claims constitutes a wrongful repudiation of its coverage obligations under the 2007-2008 Policy and is a breach of the 2007-2008 Policy.

33. As a result of Zurich's breach of the 2007-2008 Policy, FORBA has sustained and will continue to sustain substantial damages, in an amount to be established at trial, for which Zurich is liable to FORBA.

COUNT II: DECLARATORY JUDGMENT

34. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth above in paragraphs 1-28.

35. Zurich was paid substantial premiums in exchange for the Policies. The Policies cover FORBA for losses it has sustained and continues to sustain as a result of the government Claims. Zurich has wrongfully refused to pay for the defense costs and settlement payments and has otherwise repudiated its coverage obligations to FORBA.

36. Pursuant to 28 § U.S.C. 2201(a), an actual case or controversy exists regarding Plaintiff's rights and Defendant's obligations under the Policies to pay losses incurred in defense and settlement of the government Claims.

37. Pursuant to 28 § U.S.C. 2201(a), Plaintiff seeks a declaratory judgment from this Court establishing the following:

- (a) Plaintiff's losses arising from the defense and settlement of the government Claims are insured losses under the 2006-2007 Policy, and Zurich is obligated to pay Plaintiff for the full amount of its defense costs and settlement payments, up to the applicable limit of the 2006-2007 Policy; or
- (b) Alternatively, to the extent that the government Claims relate back to the 2007-2008 Policy, Plaintiff's losses arising from the defense and settlement of the government Claims are insured losses under

the 2007-2008 Policy, and Zurich is obligated to pay Plaintiff for the full amount of its defense costs and settlement payments, up to the applicable limit of the 2007-2008 Policy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands:

(1) Judgment on Count I of the Complaint in favor of Plaintiff and against Defendant as follows:

(a) For compensatory damages in an amount sufficient to compensate Plaintiff for all losses sustained as a result of Defendant's breach of the 2006-2007 Policy; or

(b) Alternatively, to the extent that the government Claims relate back to the 2007-2008 Policy, for compensatory damages in an amount sufficient to compensate Plaintiff for all losses sustained as a result of Defendant's breach of the 2007-2008 Policy;

(2) Judgment on Count II of the Complaint in favor of Plaintiff and against Defendant, declaring as follows:

(a) Plaintiff's losses arising from the defense and settlement of the government Claims are insured losses under the 2006-2007 Policy, and Defendant is obligated to pay Plaintiff for the full amount of its defense costs and settlement payments, up to the applicable limit of the 2006-2007 Policy; or

(b) Alternatively, to the extent that the government Claims relate back to the 2007-2008 Policy, Plaintiff's losses arising from the defense

and settlement of the government Claims are insured losses under the 2007-2008 Policy, and Defendant is obligated to pay Plaintiff for the full amount of its defense costs and settlement payments, up to the applicable limit of the 2007-2008 Policy;

(3) Prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of use of funds caused by Defendant's wrongful refusal to pay Plaintiff's insured losses;

(4) All costs incurred in obtaining the relief sought in this Complaint, including attorneys' fees; and

(5) Such other, further, and additional relief as this Court deems just and appropriate.

Dated this 28th day of October , 2010

Respectfully submitted,

/s/Emily B. Warth

Robert J. Walker (#2498)

J. Mark Tipps (#11710)

Emily B. Warth (#27607)

Walker, Tipps & Malone PLC

2300 One Nashville Place

150 Fourth Avenue North

Nashville, TN 37219

(615) 313-6000

bwalker@walkertipps.com

mtipps@walkertipps.com

ewarth@walkertipps.com

Attorneys for Plaintiff

FORBA Holdings, LLC

Of Counsel:

L. Joseph Loveland

KING & SPALDING LLP

1180 Peachtree Street, NE

Atlanta, GA 30309-3521

Tel: (404) 572-4600

jloveland@kslaw.com

Zurich American Insurance Company ("Insurer")
Declarations



Policy Number: DOC 9140750 00

Renewal of Number: N/A

Item 1. Named Insured and Address: SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Item 2. Coverage Sections:

Section 1. Directors & Officers Liability	Included <input checked="" type="checkbox"/>	Not Included <input type="checkbox"/>
Company Liability Coverage	Included <input checked="" type="checkbox"/>	Not Included <input type="checkbox"/>
Section 2. Employment Practices Liability	Included <input checked="" type="checkbox"/>	Not Included <input type="checkbox"/>
Section 3. Fiduciary Liability	Included <input type="checkbox"/>	Not Included <input checked="" type="checkbox"/>
Section 4. Crime	Included <input type="checkbox"/>	Not Included <input checked="" type="checkbox"/>
Section 5. Kidnap and Ransom	Included <input type="checkbox"/>	Not Included <input checked="" type="checkbox"/>

Note: If neither "included" nor "Not Included" is designated for any Coverage Section, such Coverage Section is not included

Item 3. Limit of Liability:

(A) Aggregate each Policy Period for all Coverage Sections combined: \$ 10,000,000

Note: For Coverage Sections 1, 2, 3 and 5 (if included), the Limit of Liability and the Self Insured Retention are reduced or exhausted by Defense Costs.

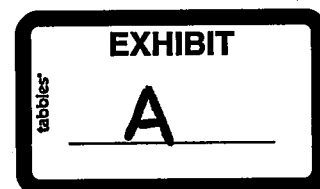
(B) Additional Aggregate each Policy Period for excess Defense Costs under Coverage Section 2:\$0

(C) Coverage Section 4 Sublimits of Liability

Insuring Agreement I.A.	\$
Insuring Agreement I.B.	\$
Insuring Agreement I.C.	\$
Insuring Agreement I.D.	\$
Insuring Agreement I.E.	\$
Insuring Agreement I.F.	\$
Insuring Agreement I.G.	\$

(D) Coverage Section 5 Sublimits of Liability

1. Aggregate Sublimit of Liability:	\$
2. Each Single Loss under all Insuring Agreements, combined:	\$
3. Each Single Loss under Insuring Agreement A (Ransom/Extortion):	\$
4. Each Single Loss under Insuring Agreement B (In Transit/Delivery):	\$



U-PDO-D-100-A CW (05/03)
Page 1 of 2

5. Each Single Loss under Insuring Agreement C (Expenses): \$ _____

6. Each Single Loss under Insuring Agreement D (Defense): \$ _____

Item 4. Policy Period: From 12:01 A.M. on 12/13/2006
To 12:01 A.M. on 12/13/2007
Local time at the address shown in Item 1.

Item 5. Self Insured Retention:

Section 1. Directors & Officers Liability		
Insuring Agreement A	\$ 0	
Insuring Agreement B	\$ 75,000	each Claim
Insuring Agreement C (if included)	\$ 75,000	each Claim
Section 2. Employment Practices Liability	\$ 100,000	each Claim
Section 3. Fiduciary Liability	\$ _____	each Claim
Section 4. Crime	\$ _____	each Occurrence
Section 5. Kidnap and Ransom	\$ _____	each Single Loss

Item 6. Extended Reporting Period (applicable to Coverage Sections 1, 2, and 3 only):

(A) Additional Premium: 125% (B) Additional Period: 1 Year

Item 7. Continuity Date:

Section 1. Directors & Officers Liability	12/13/2006
Section 2. Employment Practices Liability	12/13/2006
Section 3. Fiduciary Liability	

Item 8. Prior or Pending Date:

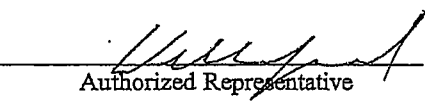
Section 1. Directors & Officers Liability	12/13/2006
Section 2. Employment Practices Liability	12/13/2006
Section 3. Fiduciary Liability	

Item 9. Employee Benefit Plan(s) covered under Coverage Section 4:

Item 10. Endorsements Effective at Inception: Numbers 1-12 as attached.

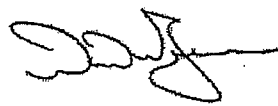
SECTIONS 1, 2, AND 3 OF THIS POLICY ARE CLAIMS MADE COVERAGES. EXCEPT TO SUCH EXTENT AS MAY BE PROVIDED HEREIN, COVERAGE PROVIDED BY THESE COVERAGE SECTIONS (IF INCLUDED) IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED.

THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ CAREFULLY.


Authorized Representative

11/5/07
Date


President


Corporate Secretary

Zurich Private Solutions - Enhanced



Refer to Section III. of the COMMON POLICY TERMS, and the DEFINITIONS appearing in each Coverage Section attached for the special meaning of words and phrases that appear in bold.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine the Company's rights and duties and what is and is not covered.

Except for these COMMON POLICY TERMS or unless stated to the contrary in any Coverage Section, the terms and conditions of each Coverage Section apply only to that Coverage Section and shall not apply to any other Coverage Section. If any provision in the COMMON POLICY TERMS is inconsistent or in conflict with the terms and conditions of any Coverage Section, the terms and conditions of such Coverage Section shall control for purposes of that Coverage Section.

In consideration of the payment of the premium, the undertaking of the Insureds to pay the Self Insured Retention, if any, and in reliance upon the statements in the application and its attachments and any materials submitted therewith, all of which are made a part hereof, and subject to the applicable Limit of Liability and the Exclusions, Conditions and other terms of this policy (including COMMON POLICY TERMS, all applicable Coverage Sections included and any endorsements attached thereto), the Zurich American Insurance Company (herein called the Insurer) and the Insureds agree as follows:

COMMON POLICY TERMS

I. LIMIT OF LIABILITY AND SELF INSURED RETENTION

- A. Except as otherwise provided in Subsection I.B. below, the maximum aggregate liability under this policy for all **Loss**, whether covered under one or more Coverage Sections, shall be the Aggregate Limit of Liability set forth in Item 3.(A) of the Declarations. **Defense Costs** are part of and not in addition to any applicable Limit of Liability. Subject to the Aggregate Limit of Liability set forth in Item 3.(A), the Sublimits of Liability set forth in Item 3.(C) and 3.(D) of the Declarations are the Insurer's maximum liability under this policy for **Loss** subject to such Sublimits. Such Sublimits shall be part of and not in addition to the Aggregate Limit of Liability set forth in Item 3.(A) of the Declarations.
- B. Notwithstanding Subsection I.A. above, if the Aggregate Limit of Liability set forth in Item 3.(A) of the Declarations is exhausted by the Insurer's payment of **Loss** under this policy, the Insurer's maximum liability under Coverage Section 2, if included, for any **Defense Costs** which are otherwise covered under Coverage Section 2 and which are incurred after such Aggregate Limit of Liability is exhausted, shall be the Additional Aggregate Limit of Liability set forth in Item 3.(B) of the Declarations.
- C. Except as otherwise provided in any Coverage Section, the Insurer's liability with respect to **Loss** arising from each **Claim** covered under Coverage Sections 1, 2 or 3, each **Occurrence** covered under Coverage Section 4, and each **Single Loss** covered under Coverage Section 5, shall apply only to that part of **Loss** which is excess of the applicable Self Insured Retention set forth in Item 5. of the Declarations. If different portions of a single **Claim**, **Occurrence** or **Single Loss** are subject to different Self Insured Retentions, the applicable Self Insured Retention will be applied separately to each portion of such **Claim**, **Occurrence** or **Single Loss**, but the sum of such Self Insured Retentions shall not exceed the largest applicable Self Insured Retention.
- D. For the purposes of Coverage Sections 1, 2, and 3, if included, all **Claims** arising out of the same **Wrongful Act**, **Wrongful Employment Act** and all **Interrelated Wrongful Acts** of the Insureds shall be deemed one **Loss** on account of one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against the Insureds, regardless of whether such date is before or during the **Policy Period**.
- E. **Defense Costs** shall be part of and not in addition to the applicable Limit of Liability set forth in Item 3. of the Declarations, and **Defense Costs** shall reduce such Limit of Liability. The Insurer is entitled to pay **Loss** as it becomes due and payable by the Insureds, without consideration of other future payment obligations.

II. EXTENDED REPORTING PERIOD

- A. If the Insurer or the Named Insured fails or refuses to renew this policy, or if the Named Insured cancels this policy, then the Named Insured shall have the right, upon payment of the additional premium set forth in Item 6.(A) of the Declarations,

to an Extended Reporting Period afforded under Coverage Sections 1, 2 and 3, if included, for the period set forth in Item 6.(B) of the Declarations following the effective date of such nonrenewal or cancellation, but only with respect to covered **Wrongful Acts** (under Coverage Sections 1 and 3, if included) or **Wrongful Employment Acts** (under Coverage Section 2, if included) taking place prior to the effective date of such nonrenewal or cancellation. This right of extension shall lapse unless written notice of an election to purchase this Extended Reporting Period, together with payment of the additional premium due, is given by the **Named Insured** to the Insurer within thirty (30) days following the effective date of nonrenewal or cancellation of the policy. If such written notice is not mailed to the Insurer within thirty (30) days or the premium is not paid when due, then the **Named Insured** shall not at a later date be entitled to purchase an Extended Reporting Period.

- B. The entire additional premium for the Extended Reporting Period shall be deemed fully earned and non-refundable as of the effective date of the Extended Reporting Period.
- C. The election of the Extended Reporting Period shall not in any way reinstate or increase the Limit of Liability in Item 3. of the Declarations. The Limit of Liability applicable to the Extended Reporting Period shall be the Limit of Liability remaining under this policy for the **Policy Period**.

III. DEFINITIONS

- A. **Application** means (1) all signed applications, including attachments and materials submitted therewith, for this policy and for any policy issued by the Insurer of which this policy is a direct or indirect renewal or replacement, and (2) any public documents filed by the **Company** with any federal, state, local or foreign regulatory or administrative authority.
- B. **Company**, either in the singular or plural, means the **Named Insured** and all **Subsidiaries**.
- C. **Continuity Date** means the date(s) indicated in Item 7. of the Declarations, upon which the first policy for the coverages specified in Item 7. of the Declarations was issued by any insurer to the **Named Insured** provided such coverage was continuously renewed and maintained in effect up to the inception date of this policy.
- D. **Executive Officers**, either in the singular or plural, means the chairperson, president, chief executive officer, chief financial officer, general partner, **Manager**, in-house general counsel, or equivalent executive, and with respect to Coverage Section 2, if included, the director of human resources or equivalent position.
- E. **Insured(s)** means, with respect to any Coverage Section included, only those organizations, plans and natural persons covered under such Coverage Section.
- F. **Interrelated Wrongful Acts** means all **Wrongful Acts**, as defined in Coverage Sections 1, and 3, or **Wrongful Employment Acts**, as defined in Coverage Section 2, that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes. All **Wrongful Acts** or **Wrongful Employment Acts** that are alleged in the same **Claim** shall be considered **Interrelated Wrongful Acts**.
- G. **Loss** means, with respect to any Coverage Section, any damages, settlements, judgments, costs, expenses or other loss covered under such Coverage Section.
- H. **Manager**, either in the singular or plural, means any natural person who is legally responsible in whole or in part for the supervision and/or management of any **Company** that is a limited liability company, including without limitation, managers, managing members, directors, officers, or any natural person serving in an equivalent position with the **Company**.
- I. **Named Insured** means the organization designated in Item 1. of the Declarations.
- J. **Policy Period** means the period of time specified in Item 4. of the Declarations, subject to prior termination in accordance with Subsection IV.F. of the COMMON POLICY TERMS. If this period is less than or greater than one (1) year, then the respective aggregate Limit of Liability specified in Item 3. of the Declarations shall be the Insurer's maximum liability under this policy for the entire period with respect to **Loss** otherwise subject to such aggregate Limit of Liability.
- K. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- L. **Subsidiary**, either in the singular or plural, means any corporation in which more than fifty percent (50%) of the outstanding voting securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by the **Named Insured** or by one or more **Companies**.

IV. CONDITIONS

It shall be a condition precedent to the Insurer's obligations under this policy that the **Insured** comply with all of the terms and conditions set forth in this policy.

A. **INSURED'S DUTIES IN THE EVENT OF A CLAIM OR LOSS**

1. Applicable To Coverage Sections 1,2, and 3:

- a. The **Insured** shall give written notice to the Insurer of any **Claim** otherwise covered under this policy as soon as practicable but in no event later than sixty (60) days after the end of the **Policy Period**, if applicable, or within the **Extended Reporting Period**, if exercised.
- b. The **Insureds** shall cooperate with the Insurer, including providing all information requested by the Insurer regarding any **Claim** and cooperating fully with the Insurer in the defense, investigation and settlement of any **Claim**. Upon the Insurer's request, the **Insureds** shall submit to examination by a representative of the Insurer, under oath if required. In addition, upon the Insurer's request, the **Insureds** shall attend hearings, depositions, trials, mediations and arbitrations and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits and trials, all without charge to the Insurer.
- c. The **Insureds** shall follow the Insurer's direction regarding whether to accept or reject a demand for arbitration of any **Claim**, and shall not voluntarily agree to arbitrate a **Claim** without the Insurer's written consent.
- d. The **Insureds** agree that in the event of a **Claim** the **Insureds** will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery.
- e. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's prior written consent. The Insurer shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. Except for Coverage Section 1, if the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Insurer's recommendations, then subject to the applicable **Limit of Liability**, the Insurer's liability under Coverage Section 2 and 3 with respect to such **Claim** shall not exceed the amount for which such **Claim** could have been settled by the Insurer plus **Defense Costs** up to the date the **Insureds** refused to settle such **Claim**. The Insurer and the **Insureds** shall not unreasonably withhold any consent referenced in this paragraph.

2. Applicable To Coverage Sections 4 and 5:

In the event of a **Loss** otherwise covered under Coverage Section 4 or 5, if included, the **Insured** shall give notice to the Insurer and shall provide such additional information and comply with such other conditions as set forth in such respective Coverage Section.

B. **NOTICE OF POTENTIAL CLAIM (Coverage Section 1, 2 and 3 only)**

If during the **Policy Period** an **Insured** becomes aware of and gives written notice to the Insurer of a **Wrongful Act** or a **Wrongful Employment Act** that occurred during the **Policy Period** and that could give rise to a **Claim** against the **Insured** under Coverage Section 1, 2 or 3, then any **Claim** subsequently arising out of such **Wrongful Act** or **Wrongful Employment Act** shall be deemed for purposes of this policy to have been made during the **Policy Period** in which the written notice was submitted to the Insurer, provided such written notice to the Insurer includes all of the following:

1. the names of all potential claimants;
2. the identity of each **Insured** who committed the **Wrongful Act** or **Wrongful Employment Act**;
3. a detailed description of the **Wrongful Act** or **Wrongful Employment Act**;
4. the damage which has or may result from the **Wrongful Act** or **Wrongful Employment Act**; and
5. the circumstances by which the **Insured** first became aware of such **Wrongful Act** or **Wrongful Employment Act**.

C. NOTICE

All notices under any provision of this policy shall be in writing and properly addressed as follows:

1. Notice to the **Insureds** may be given to the **Named Insured** at the address as shown in Item 1. of the Declarations.
2. Notice to the Insurer of any **Claim**, potential **Claim**, or **Loss** shall be given to the Insurer at the following address:
Management Solutions Group
Attn: Claim Director
Zurich North America – Specialties
P.O. Box 307010
Jamaica, New York 11430-7010
3. All other notices to the Insurer under this policy shall be given to the following address:
Management Solutions Group
One Liberty Plaza
New York, New York 10006
4. Any notice to the Insurer of any **Claim**, potential **Claim**, or **Loss** shall designate the Coverage Section(s) under which the notice is being given and shall be treated as notice under only the Coverage Section(s) so designated.
5. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

D. REPRESENTATIONS AND SEVERABILITY

In granting coverage to the **Insureds** under any Coverage Section, the Insurer has relied upon the declarations and statements in the **Application** and upon any declarations and statements in the original written application submitted by the **Insureds** to another insurer with respect to the similar coverage incepting as of the respective **Continuity Date** set forth in Item 7. of the Declarations. All such declarations and statements are the basis of this policy and shall be considered as incorporated in and constituting part of this policy.

The **Insureds** represent that all such declarations and representations are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this policy. The **Insureds** agree that in the event that any such declarations and representations are untrue, this policy shall be void *ab initio* and shall not afford any coverage with respect to any of the following **Insureds**:

1. any **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**;
2. the **Company**, to the extent it indemnifies any **Insured Person** referenced in 1. above;
3. the **Company** and any **Benefit Program** if any **Executive Officer** of such **Company** or **Benefit Program** knew the facts that were not truthfully disclosed in the **Application**; and
4. all **Insureds** if the person signing the **Application** knew the facts that were not truthfully disclosed in the **Application**;

whether or not the **Insured Person** or **Executive Officer** described in 1., 2., or 3. above knew that the **Application** contained such untruthful disclosure.

E. OTHER INSURANCE

If any **Loss** under this policy is insured under any other valid and collectible insurance policy(ies), prior or current, then this policy shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability in this policy.

F. POLICY TERMINATION

This policy and any included Coverage Section shall terminate at the earliest of the following times:

1. upon expiration of the **Policy Period** as set forth in Item 4. of the Declarations;

2. the effective date of termination specified in written prior notice by the **Named Insured** to the Insurer;
3. ten (10) days after receipt by the **Named Insured** of a written notice of termination from the Insurer for failure to pay a premium when due; or
4. at such other time as may be agreed upon by the **Named Insured** and the Insurer.

The Insurer shall refund the unearned premium computed at customary short rates if this policy is terminated by the **Named Insured**. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of termination.

G. SUBROGATION

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice such rights.

H. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless there has been full compliance with all the terms and conditions of this policy, and both the **Insured's** liability and the amount of **Insured's** obligations to pay have been finally determined either by judgment against the **Insured** after an actual trial, or by agreement of the **Insured**, the claimant and Insurer, in writing.

No person or organization shall have any right under this policy to join the Insurer as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Insurer be impleaded by the **Insured** or any legal representatives thereof.

I. POLICY TERRITORY

Coverage under this policy shall extend anywhere in the world.

J. AUTHORIZATION

The **Named Insured** shall act on behalf of all **Insureds** with respect to the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this policy, giving and receiving any notice, and the exercise of the rights provided in Section II. of the COMMON POLICY TERMS.

K. ASSIGNMENT

The contractual rights of the **Insured** under this policy shall not be assignable to any other person or entity.

L. BANKRUPTCY OR INSOLVENCY

Bankruptcy or insolvency of the **Insured** shall not relieve the Insurer of its obligations under this policy.

If a liquidation or reorganization proceeding is commenced by any **Company** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered **Claim** under this policy, the **Insureds** hereby:

1. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this policy under such Bankruptcy Law; and
2. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this policy as a result of the commencement of such liquidation or reorganization proceeding.

M. CHANGES

Notice to any agent or representative, or knowledge possessed by any agent, representative or any other person shall not effect a waiver or a change in any part of this policy, or prevent the Insurer from asserting any rights under the terms of this policy; nor shall the terms of this policy be waived or materially changed, except by endorsements issued to form a part of this policy.

N. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES (Coverage Section 1, 2, and 3 only)

1. If a **Claim** against a natural person **Insured** includes a claim against the **Insured's** lawful spouse solely by reason of (a) such spouse's legal status as a spouse of the **Insured**, or (b) such spouse's ownership interest in property which the claimant seeks as recovery for alleged **Wrongful Acts** (under Coverage Sections 1 and 3, if included) or **Wrongful Employment Acts** (under Coverage Section 2, if included) of the **Insured**, all loss which such spouse becomes legally obligated to pay by reason of such **Claim** shall be treated for purposes of this policy as **Loss** which the **Insured** becomes legally obligated to pay on account of the **Claim** made against the **Insured**. All terms and conditions of this policy, including without limitation the Self Insured Retention, applicable to **Loss** incurred by such **Insured** in the **Claim** shall also apply to such spousal loss. This coverage extension does not apply to the extent the **Claim** alleges any wrongful act or omission by the **Insured's** spouse.
2. This policy shall afford coverage for **Claims** for the **Wrongful Acts** (under Coverage Sections 1 and 3, if included) or **Wrongful Employment Acts** (under Coverage Section 2, if included) of any **Insured** that are made against the estates, heirs, legal representatives or assigns of any **Insured** who is deceased, incompetent, insolvent or bankrupt to the extent that, in the absence of such death, incompetence, insolvency or bankruptcy, such **Claim** would have been covered by this policy.

O. VALUATION AND TERRITORY

The Limit of Liability, Self Insured Retention, **Loss**, premium and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this policy is stated in a currency other than The United States of America dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively, except as otherwise provided in Coverage Section 4 or 5, if included.

COVERAGE SECTION 1.

DIRECTORS & OFFICERS LIABILITY AND COMPANY REIMBURSEMENT



I. INSURING AGREEMENTS

A. Directors and Officers Liability Coverage

The Insurer shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or, if exercised, during the **Extended Reporting Period**, for a **Wrongful Act** taking place before or during the **Policy Period**.

B. COMPANY Reimbursement Coverage

The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to the **Insured Persons**, as permitted or required by law, and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or, if exercised, during the **Extended Reporting Period**, for a **Wrongful Act** taking place before or during the **Policy Period**.

C. COMPANY LIABILITY COVERAGE

If **Company Liability Coverage** is included pursuant to Item 2. of the **Declarations**, the Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay on account of any **Claim** first made against the **Company** during the **Policy Period** or, if exercised, during the **Extended Reporting Period**, for a **Wrongful Act** taking place before or during the **Policy Period**.

D. OUTSIDE POSITION COVERAGE

Coverage under this Coverage Section for an **Insured Person** in an **Outside Position**:

1. shall be specifically excess of any indemnity payment by, or any valid and collectible insurance maintained by, the **Outside Entity** or any other organization (other than the **Company**);
2. solely with respect to an **Insured Person** in an **Outside Position** with an **Outside Entity** described in Subsection III.G.2 of this Coverage Section, shall not apply (a) to Insuring Agreement B, or (b) to any **Loss** under Insuring Agreement A for which the **Company** is permitted or required by common or statutory law, but fails or refuses other than for reason of **Financial Impairment**, to indemnify the **Insured Person**; and
3. shall not extend to the **Outside Entity** or to any director, officer, trustee, governor, manager, or other equivalent executive or employee of the **Outside Entity** other than the **Insured Person** serving in the **Outside Position**.

If the Insurer or any affiliate of the Insurer makes payment under another policy on account of any **Claim** also covered under this Coverage Section by reason of coverage for an **Insured Person** in an **Outside Position**, the Insurer's applicable Limit of Liability under this policy with respect to such **Claim** shall be reduced by the amount of such payment.

II. DEFENSE AND SETTLEMENT

Subject to this Section II., it shall be the duty of the **Insureds** and not the duty of the Insurer to defend **Claims** against the **Insureds**. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any **Claim** that appears reasonably likely to be covered in whole or in part by this Coverage Section.

III. DEFINITIONS

For purposes of this Coverage Section:

A. **Claim** means:

1. a written demand for monetary damages or other relief;
2. a civil proceeding commenced by the service of a complaint or similar pleading;
3. a criminal proceeding commenced by a return of an indictment; or
4. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

against any **Insured Person** or, with respect to Insuring Agreement C., against the **Company** for a **Wrongful Act**, including any appeal therefrom.

- B. **Defense Costs** means that part of **Loss** consisting of reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Company**) incurred in defending or investigating **Claims** and the premium for appeal, attachment or similar bonds; provided, however, the Insurer has no obligation to apply for or to furnish any such bond.
- C. **Financial Impairment** means the status of the **Company** resulting from:
1. the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**;
 2. the **Company** becoming a debtor in possession; or
 3. the **Company's** financial inability to pay its debts in the ordinary course of business as they become due.
- D. **Insured**, either in the singular or plural, means one or more of the following:
1. the **Company** if **Company Liability Coverage** is included pursuant to Item 2., of the Declarations; or
 2. the **Insured Persons**.
- E. **Insured Capacity** means the position or capacity described in the definition of **Insured Persons**.
- F. **Insured Persons**, in the singular or plural, means:
1. any person who was, is, or shall be a duly elected director or a duly appointed or elected officer, **Manager** or trustee of the **Company**, or with respect to a **Subsidiary** chartered outside the United States, their functional equivalent; and
 2. any duly elected or appointed officer or **Manager** of the **Company** while serving in an **Outside Position**.
- G. **Loss** means the amount which the **Insured Persons** or, with respect to Insuring Agreement C., the **Company** become legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements and **Defense Costs**. **Loss** does not include (1) any amount not indemnified by the **Company** for which the **Insured Persons** are absolved from payment by reason of any covenant, agreement or court order, (2) any amount incurred by the **Company** (including its board of directors or any committee of the board of directors) in connection with the investigation or evaluation of any actual or potential **Claim** by or on behalf of the **Company**, (3) any amount incurred in the prosecution of an affirmative claim, counterclaim or cross claim, (4) any amount allocated pursuant to Subsection V.B. of this Coverage Section to uncovered loss, (5) fines or penalties imposed by law, punitive or exemplary damages, or the multiple portion of any multiplied damage award, (6) taxes, (7) the cost to comply with any injunctive or other monetary relief or any agreement to provide such relief, or (8) matters uninsurable under the law pursuant to which this policy is construed.
- However, this definition does not exclude from coverage punitive or exemplary damages or the multiple portion of a multiplied damage award to the extent such damages or damage award: (1) is insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the Insurer, this policy or the **Wrongful Act**; and (2) is less than \$100,000, such amount to be part of and not in addition to, the applicable **Limit of Liability** set forth in Item 3. of the Declarations.
- H. **Outside Entity** means:
1. any non-profit corporation, organization, foundation or eleemosynary institution exempt from federal income tax as an organization described in Section 501(c)(3), Internal Revenue Code of 1986, as amended; and
 2. any other corporation or organization while such corporation or organization (a) has no outstanding securities that have been offered, sold or distributed to the public, and (b) has less than \$50 million of total consolidated assets as reflected in the corporation's or organization's audited consolidated financial statements.
- I. **Outside Position** means the position of director, officer, manager, trustee, governor or equivalent executive position with any **Outside Entity**, provided that service in such position was at the specific request of the **Company** or was part of the duties regularly assigned by the **Company**.
- J. **Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted (1) by any of the **Insured Persons**, individually or otherwise, in his or her **Insured Capacity**, or any matter claimed against the **Insured Persons** solely by reason of their serving in such **Insured Capacity**, or (2) solely with respect to Insuring Agreement C., if included, by the **Company**.

IV. EXCLUSIONS

- A. The Insurer shall not be liable under this Coverage Section for **Loss** on account of any **Claim** made against any **Insured**:

1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this policy is a direct or indirect renewal or replacement;
2. based upon, arising out of, or attributable to any demand, suit or proceeding pending, or order, decree or judgment entered against the **Company** or any **Insured Person** on or prior to the respective Prior or Pending Date set forth in Item 8. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
3. brought or maintained by or on behalf of the **Company** or any **Insured Person** in any capacity except:
 - a. a **Claim** that is a derivative action brought or maintained on behalf of the **Company** by one or more persons who are not **Insured Persons** and who bring and maintain the **Claim** without the solicitation, assistance or active participation of the **Company** or any **Insured Person**; or
 - b. **Defense Costs** incurred by an **Insured Person** in an employment related **Claim** against such **Insured Person** in his or her capacity as an officer of the **Company**; or
 - c. a **Claim** brought or maintained by any **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this Coverage Section;
4. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, as amended, or any similar provisions of federal, state or local law, but only with respect to any plan sponsored by the **Company** for the benefit of its own employees;
5. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof;
6. for service by the **Insured Person** in any position or capacity in any organization other than the **Company** even if the **Company** directed or requested the **Insured Person** to serve in such other position or capacity, except to the extent such coverage is otherwise provided by this Coverage Section or by written endorsement to this Coverage Section for **Outside Positions**;
7. which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time, or which is otherwise based upon, arising out of or attributable to (a) any request, demand, order or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**, or any voluntary decision to do so; or (b) any demand, suit or proceeding by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of **Pollutants**;

including but not limited to any **Claim** for financial loss to any **Company**, its security holders or its creditors based upon, arising out of, or attributable to the matters otherwise described in this exclusion;
8. for libel, slander, false arrest, detention or imprisonment, malicious prosecution, violation of any right of privacy, wrongful entry or eviction or other invasion of any right of private occupancy;
9. based upon, arising out of, or attributable to any **Wrongful Act** occurring prior to the **Continuity Date**, if on such date any **Insured** knew or reasonably could have foreseen that such **Wrongful Act** could lead to a **Claim**;
10. based upon, arising out of, or attributable to any actual or attempted offering, solicitation, sale, distribution, or issuance of securities to the public, whether or not a prospectus has been issued; provided, however, if at least thirty (30) days prior to such event, the Insurer is given written notice of such event by the **Named Insured** together with any information requested by the Insurer, the Insurer shall offer a proposal to provide coverage for such event, subject to such terms, conditions and additional premium as the Insurer shall determine at its sole discretion;
11. for **Wrongful Acts** taking place on or after the date any securities of the **Company** first become listed on any national exchange or the Nasdaq National Market or the Nasdaq SmallCap Market, if such **Claim** is based upon, arises out of or is attributable to any actual or attempted purchase, sale, distribution, or issuance of, or offer to purchase or sell, securities issued by the **Company**, whether such purchase, sale, distribution, issuance or offer involves a transaction with the **Company** or occurs in the open market, including but not limited to any such **Claim** alleging violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Racketeer Influenced and Corrupt Organizations Act, any applicable state "blue-sky" law, any other federal, state, local or provincial common or statutory law relating to securities, or any rules or regulations promulgated under any of the foregoing, all as amended;

12. for any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed by such **Insured**, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a deliberately fraudulent act or omission or willful violation;
13. based upon, arising out of, or attributable to such **Insured** gaining in fact any personal profit, remuneration or financial advantage to which such **Insured** was not legally entitled;
14. brought or maintained by or on behalf of a past, present or prospective employee of the **Company** in his or her capacity as such, including without limitation any **Claim for Wrongful Acts** based upon, arising out of, or attributable to the **Company's** actual or prospective employment of such person, the termination of such employment, or any discriminatory or tortious conduct against such person in his or her capacity as such, provided that this Exclusion shall not apply to **Defense Costs** incurred by an **Insured Person** in any such **Claim** against the **Insured Person** in his or her capacity as an officer of the **Company**.

No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for purposes of applying Exclusions 12. and 13. above. Only facts pertaining to and knowledge possessed by the Chairperson, President, Chief Executive Officer, Chief Financial Officer or in-house General Counsel of the **Company** shall be imputed to the **Company** for purposes of applying Exclusions 12. and 13. above.

B. The Insurer shall not be liable under Insuring Agreement C., if included, of this Coverage Section for Loss on account of any **Claim**:

1. based upon, arising out of, or attributable to the actual or proposed payment by the **Company** of allegedly inadequate consideration in connection with the **Company's** purchase of securities issued by any **Company**; provided that this Exclusion shall not apply to **Defense Costs**;
2. based upon, arising out of, or attributable to any actual or alleged liability of the **Company** under any written or oral contract or agreement, provided that this Exclusion shall not apply to the extent that the **Company** would have been liable in the absence of the contract or agreement;
3. based upon, arising out of, or attributable to the rendering or failure to render any service to a customer or client of the **Company**;
4. based upon, arising out of, or attributable to any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress, service mark or misappropriation of ideas or trade secrets; or
5. based upon, arising out of, or attributable to libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium.

C. The Insurer shall not be liable for Loss on account of any **Claim** made against an **Insured Person** while serving in an **Outside Position**:

1. based upon, arising out of, or attributable to any **Wrongful Acts** taking place in whole or in part before the date such **Insured Person** began to serve in the **Outside Position** or after the date such **Insured Person** ceases to serve in the **Outside Position**; or
2. brought or maintained (a) by the **Outside Entity**, or (b) on behalf of the **Outside Entity** if any director, officer, manager, trustee, governor or equivalent executive of the **Outside Entity** instigates, assists or participates in the prosecution of such **Claim**, or (c) by any director, officer, manager, trustee, governor or equivalent executive of the **Outside Entity**.

V. CONDITIONS

A. PRESUMPTIVE INDEMNIFICATION

If the **Company** is permitted or required by common or statutory law, but fails or refuses, other than for reason of **Financial Impairment**, to indemnify the **Insured Persons** for Loss, then, notwithstanding any other conditions, provisions or terms of this policy to the contrary, any payment by the Insurer of such Loss shall be subject to the Insuring Agreement B. Self Insured Retention set forth in Item 5. of the Declarations and all exclusions set forth in Section IV.

For purposes of this Subsection V.A., the shareholder, board of director and **Manager** resolutions of the **Company** shall be deemed to provide indemnification for such Loss to the fullest extent permitted by law.

B. ALLOCATION

If both Loss covered by this Coverage Section and loss not covered by this Coverage Section are incurred either because a **Claim** against **Insureds** includes both covered and uncovered matters or because a **Claim** is made against both **Insureds** and others, including the **Company** if Insuring Agreement C. is not included, then the **Insured Persons**, the **Company** and the Insurer shall allocate such amount between covered Loss and uncovered loss based upon the relative legal and financial exposures of the parties to covered and uncovered matters and the relative benefits of the parties arising from the defense or settlement of such **Claim**.

If the Insurer, the **Insured Persons** and the **Company** agree on an allocation of **Defense Costs**, the Insurer shall advance on a current basis **Defense Costs** allocated to covered Loss. If the Insurer, the **Insured Persons** and the **Company** cannot agree on an allocation, the Insurer shall advance on a current basis the **Defense Costs** which the Insurer believes to be covered under this Coverage Section until a different allocation is negotiated, arbitrated, or judicially determined. Any such negotiated, arbitrated, or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any advancement of **Defense Costs** shall be repaid to the Insurer by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defense Costs** are not insured by this Coverage Section.

Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to the allocation of other Loss on account of such **Claim**. In any arbitration, suit or other proceeding among the Insurer, the **Insured Persons** or the **Company**, no presumption shall exist concerning what is a fair and proper allocation between covered Loss and uncovered loss.

C. CHANGES IN EXPOSURE

1. Acquisition or Creation of Another Organization

If before or during the **Policy Period** a **Company**:

- a. acquires securities or voting rights in another organization or creates another organization which, as a result of such acquisition or creation, becomes a **Subsidiary**; or
- b. acquires any organization by merger into or consolidation with the **Company**;

then, subject to all terms and conditions of this policy, such organization and its **Insureds** automatically shall be covered under this Coverage Section, but only with respect to **Wrongful Acts** taking place after such acquisition or creation, unless the Insurer agrees, after presentation by the **Named Insured** of a complete application and all appropriate information, to provide coverage by endorsement for **Wrongful Acts** taking place before such acquisition or creation.

However, if the fair value of all cash, securities, assumed indebtedness and other consideration paid by the **Company** for any such acquisition during the **Policy Period** exceeds twenty-five percent (25%) of the total consolidated assets of the **Named Insured** as reflected in the **Named Insured's** then most recent audited consolidated financial statements, no coverage shall be afforded under this Coverage Section to such organization and its **Insureds** unless (i) the **Named Insured** gives written notice of such acquisition to the Insurer as soon as practicable together with such information as the Insurer may require, and (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the Insurer.

Any coverage afforded by this Subsection C.1. shall be specifically excess of the amount of any other insurance available to such **Insureds**.

2. Acquisition of the **Named Insured**

If during the **Policy Period**:

- a. the **Named Insured** merges into or consolidates with another organization and such other organization is the surviving entity; or
- b. another organization or person or group of organizations or persons acting in concert acquires securities or voting rights that results in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors of the **Named Insured**;

then coverage under this Coverage Section shall continue until the later of:

- (i) the termination of the **Policy Period**; or
- (ii) any other subsequent date to which the Insurer may agree by endorsement;

but only with respect to **Claims for Wrongful Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (ii) above shall be conditioned upon payment during the **Policy Period** by the **Named Insured** of any additional premium and shall be subject to any additional terms and conditions required by the Insurer. Any **Claim** made during such coverage extension, if granted, shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred. The **Insureds** shall not be entitled to purchase the Extended Reporting Period if a coverage extension pursuant to (ii) above is purchased.

The **Named Insured** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such information as the Insurer may require.

3. **Cessation of Subsidiaries**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage under this Coverage Section with respect to such **Subsidiary** and its **Insureds** shall continue until termination of this policy, but only with respect to **Claims for Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

D. **COORDINATION OF COVERAGE**

Any **Loss** covered under both this Coverage Section and the Employment Practices Liability Coverage Section, if included, shall be first covered under the Employment Practices Liability Coverage Section, subject to the terms, conditions and limitations therein. Any remaining portion of **Loss** otherwise covered under this Coverage Section which is not paid under the Employment Practices Liability Coverage Section shall be covered under this Coverage Section, subject to its terms, conditions and limitations.

COVERAGE SECTION 2.

EMPLOYMENT PRACTICES LIABILITY



I. INSURING AGREEMENT

The Insurer shall pay on behalf of the Insureds all Loss for which the Insureds become legally obligated to pay on account of any Claim by or on behalf of a past, present or prospective Employee of the Company for a Wrongful Employment Act taking place before or during the Policy Period if such Claim is first made against the Insureds, individually or otherwise, during the Policy Period or, if purchased, the Extended Reporting Period.

II. DEFENSE AND SETTLEMENT

- A. It shall be the right and duty of the Insurer, and not the Insureds, to defend Claims against the Insureds, even if the allegations in the Claim are groundless, false or fraudulent. The Insurer's right and duty to defend includes, without limitation, the right and duty to select defense counsel. The Insurer's duty to defend any Claim or to pay Loss for such Claim ends when the Limit of Liability applicable to such Claim or to the Policy Period in which such Claim is first made or is deemed to be first made has been exhausted.
- B. In the event the Insurer does not assume the defense of any Claim, the Insurer shall advance on a current basis the Defense Costs which the Insurer believes to be covered under this Coverage Section. Any advancement of Defense Costs shall be repaid to the Insurer by the Insureds, severally according to their respective interests, if and to the extent it is determined that such Defense Costs are not insured by this Coverage Section.

III. DEFINITIONS

For purpose of this Coverage Section:

A. Claim means:

1. a written demand for monetary damages;
2. a civil proceeding commenced by the service of a complaint or similar pleading;
3. a criminal proceeding commenced by the return of an indictment;
4. a formal administrative or regulatory proceeding (including without limitation an EEOC Proceeding) commenced by receipt of a notice of charges, formal investigative order or similar document; or
5. an arbitration or alternative dispute resolution proceeding;

against any Insured for a Wrongful Employment Act, including any appeal therefrom. However, Claim does not include any labor or grievance proceeding pursuant to a collective bargaining agreement.

- B. Defense Costs means that part of Loss consisting of reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of directors, officers or Employees of the Company) incurred in defending or investigating Claims and the premium for attachment or similar bonds, provided, however, the Insurer has no obligation to apply for or furnish any such bond.
- C. EEOC Proceeding means an investigative proceeding before the Equal Employment Opportunity Commission or an adjudicatory or investigative proceeding before any similar federal, state or local government body whose purpose is to address Wrongful Employment Acts.
- D. Employee means one or more persons while in the services of the Company and whom the Company compensates (if at all) by salary, wages and/or commissions and has the right to govern and direct in the performance of such service, including without limitation volunteers and past, present, prospective, part-time, temporary, seasonal, contract and leased employees otherwise described within this definition. Employee also means any natural person independent contractor who is treated under applicable law as an employee of the Company.

- E. **Insured Persons** either in the singular or plural, means any person who has been, now is or shall become:
1. a duly elected director or a duly elected or appointed officer, **Manager** or trustee of the **Company**, or with respect to a **Subsidiary** chartered outside the United States, their functional equivalent; and
 2. an **Employee** of the **Company** if such person is considered an employee of the **Company** under the law applicable to the **Claim**.
- F. **Insureds**, either in the singular or the plural, means the **Company** and the **Insured Persons**.
- G. **Loss** means the total amount which the **Insureds** become legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the **Extended Reporting Period**, if exercised, made against them for **Wrongful Employment Acts** for which coverage applies, including but not limited to damages (including front pay and back pay), judgments, pre-judgment and post-judgment interest, settlements and **Defense Costs**.
- Loss** shall not include:
1. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
 2. fines or penalties imposed by law or **Punitive Damages**;
 3. taxes; or
 4. matters uninsurable under the law to which this policy is construed.
- However, this definition does not exclude from coverage **Punitive Damages** to the extent such damages or damage award: (1) is insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the **Insurer**, this policy or the **Wrongful Employment Act**; and (2) is less than \$100,000, such amount to be part of and not in addition to, the applicable Limit of Liability set forth in Item 3. of the Declarations of this policy.
- H. **Punitive Damages** means punitive or exemplary damages, the multiple portion of any multiplied damage award, and liquidated damages awarded under the Age Discrimination in Employment Act or the Equal Pay Act, as amended.
- I. **Wrongful Employment Act** means any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by the **Company** or by one or more **Insured Persons** in their capacities as such or by any other person for whom the **Insureds** are legally responsible, in connection with any actual, alleged or constructive wrongful dismissal, discharge or termination of employment; breach of any oral, written or implied employment contract or quasi-employment contract; employment-related misrepresentation; violation of any federal, state or local statute, regulation, ordinance, common law or public policy concerning employment or discrimination in employment; sexual or other illegal workplace harassment (including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications); wrongful failure to employ or promote; wrongful discipline; wrongful deprivation of a career opportunity; wrongful demotion or adverse change in the terms, conditions or status of employment; failure to grant tenure; failure to adopt adequate workplace or employment policies and procedures; illegal retaliatory treatment of employees; negligent hiring; negligent evaluation of employees; wrongful reference; employment-related invasion of privacy; employment-related defamation; employment-related wrongful infliction of emotional distress; or other employment-related torts.

IV. EXCLUSIONS

- A. The **Insurer** shall not be liable under this Coverage Section for **Loss** on account of any **Claim**:
1. based upon, arising out of or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this Coverage Section is a direct or indirect renewal or replacement;
 2. based upon, arising out of, or attributable to any demand, suit or proceeding pending, or order, decree or judgment entered against any **Insured** on or prior to the Prior or Pending Date set forth in Item 8. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;

3. which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time, or which is otherwise based upon, arising out of or attributable to (a) any request, demand, order or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**, or any voluntary decision to do so; or (b) any demand, suit or proceeding by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of **Pollutants**;

including but not limited to any **Claim** for financial loss to any **Company** or benefit program or their security holders, participants, beneficiaries or creditors based upon, arising out of, or attributable to the matters otherwise described in this exclusion; however, this exclusion does not apply to any employment related **Claim** for retaliation in connection with an **Insured Person's** actual or threatened disclosure of the matters described in this exclusion.
 4. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, (b) the Employee Retirement Income Security Act of 1974 (except Section 510 thereof), (c) the Fair Labor Standards Act (except the Equal Pay Act), (d) the National Labor Relations Act, (e) the Worker Adjustment and Retraining Notification Act, (f) the Consolidated Omnibus Budget Reconciliation Act of 1985, (g) the Occupational Safety and Health Act, (h) any other federal, state, or local statute or law similar to any statute or law described in (a) through (g) of this exclusion, or (i) rules or regulations promulgated under any of such statutes or laws; provided this exclusion shall not apply to any **Claim** for retaliation in connection with the claimant's actual, attempted or threatened exercise of rights pursuant to any such statute, law, rule or regulation;
 5. based upon, arising out of, or attributable to any strike, lock-out, picket or other similar actions in connection with labor disputes or labor negotiations; or
 6. for bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof.
- B. The Insurer shall not be liable under this Coverage Section for that part of **Loss**, other than **Defense Costs**, which constitutes:
1. amounts owing under or assumed by the **Insured** pursuant to any express written contract or agreement with the **Insured**; provided, however, this exclusion shall not apply to the extent the **Insured** would be liable for such **Loss** in the absence of such contract or agreement;
 2. costs to comply with any injunctive or non-monetary relief or with any agreement to provide such relief, including without limitation costs associated with providing reasonable accommodation required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act, as amended, or any similar federal, state or local statute, regulation, or common law;
 3. compensation earned by the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days; provided, however, this exclusion shall not apply to any back pay or front pay;
 4. medical or insurance benefits (or the equivalent value thereof) to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of such benefits or insurance;
 5. based upon, arising out of, or attributable to such **Insured Person** gaining in fact any personal profit, remuneration or financial advantage to which such **Insured Person** was not legally entitled; or
 6. the following employee benefits or forms of employee compensation due or to become due or the equivalent value thereof:
 - (i) any stock, stock options, stock warrants, performance stock shares, restricted stock or other compensation or incentive granted to an employee in the form of securities of the **Company**, or
 - (ii) any payment or instrument the amount or value of which is derived from the value of securities of the **Company**, including but not limited to stock appreciation rights or phantom stock plans or arrangements;provided this exclusion shall not apply to employee stock ownership plans or employee stock purchase plans.

No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for purposes of applying the exclusions set forth in this Subsection IV. A. and B. above. Only facts pertaining to or knowledge possessed by an **Executive Officer** of a **Company** shall be imputed to the **Company** for purposes of applying the exclusions set forth in this Subsection IV. A. and B. above.

V. ARBITRATION

The **Insurer** and the **Insureds** shall submit any dispute or controversy arising out of or relating to this Coverage Section or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the American Arbitration Association (AAA) shall administer the arbitration in accordance with its then prevailing commercial arbitration rules. The AAA arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators. In such arbitration, each party will bear its own legal fees and expenses.

VI. CHANGES IN EXPOSURE

A. Acquisition or Creation of Another Organization

If before or during the **Policy Period** a **Company**:

1. acquires securities or voting rights in another organization or creates another organization which, as a result of such acquisition or creation, becomes a **Subsidiary**; or
2. acquires any organization by merger into or consolidation with the **Company**;

then, subject to all terms and conditions of this policy, such organization and its **Insureds** automatically shall be covered under this Coverage Section, but only with respect to **Wrongful Employment Acts** taking place after such acquisition or creation, unless the **Insurer** agrees, after presentation by the **Named Insured** of a complete application and all appropriate information, to provide coverage by endorsement for **Wrongful Employment Acts** taking place before such acquisition or creation.

However, if, as a direct and immediate result of such acquisition, the total number of **Employees** of all **Companies** combined increases by more than twenty-five percent (25%), then no coverage shall be afforded under this Coverage Section to such organization and its **Insureds** unless (i) the **Named Insured** gives written notice of such acquisition to the **Insurer** as soon as practicable together with such information as the **Insurer** may require, and (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the **Insurer**.

Any coverage afforded by this subsection shall be specifically excess of the amount of any other insurance available to such **Insureds**.

B. Acquisition of the **Named Insured**

If during the **Policy Period**:

1. the **Named Insured** merges into or consolidates with another organization and such other organization is the surviving entity; or
2. another organization or person or group of organizations or persons acting in concert acquires securities or voting rights that results in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors of the **Named Insured**;

then coverage under this Coverage Section shall continue until the later of:

- (i) the termination of the **Policy Period**; or
- (ii) any other subsequent date to which the **Insurer** may agree by endorsement;

but only with respect to **Claims** for **Wrongful Employment Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (ii) above shall be conditioned upon payment during the **Policy Period** by the **Named Insured** of any additional premium and shall be subject to any additional terms and conditions required by the **Insurer**. Any **Claim** made during such coverage extension, if granted, shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred. The **Insureds** shall not be entitled to purchase the **Extended Reporting Period** if a coverage extension pursuant to (ii) above is purchased.

The Named Insured shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such information as the Insurer may require.

C. Cessation of **Subsidiaries**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage under this Coverage Section with respect to such **Subsidiary** and its **Insureds** shall continue until termination of this policy, but only with respect to **Claims** for **Wrongful Employment Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

VII. COORDINATION OF COVERAGE

Any **Loss** covered under this Coverage Section and either the **Directors & Officers Liability Coverage Section** or the **Fiduciary Liability Coverage Section**, if included, shall be first covered under this Coverage Section, subject to its terms, conditions and limitations.

Insured Name: SMALL SMILES HOLDING COMPANY, LLC
Policy Number: DOC 9140750 00
Effective Date: 12/13/2006



ZURICH

**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY.
THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND
CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

**DISCLOSURE OF PREMIUM
(RELATING TO TERRORISM RISK INSURANCE ACT)**

SCHEDULE*

The premium charge for risk of loss resulting from acts of terrorism (as defined in the Act) under this policy is

\$923. This amount is reflected in the total premium for this policy.

*Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act of 2002 ("TRIA"), we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the risk of loss from terrorist acts certified under that Act for lines subject to TRIA. That portion of your premium attributable is shown in the Schedule of this endorsement or in the Declarations.

B. Disclosure of Federal Participation in Payment of Terrorism Losses

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 90% of that portion of the amount of such insured losses that exceeds the applicable insurer retention (85% for acts of terrorism in 2007).

C. Limitation of Liability and Termination of the Program

The Act currently provides for no insurance industry or United States government participation in terrorism losses that exceed \$100 billion in any one calendar year. The federal program established by the Act is scheduled to terminate at the end of December 31, 2007 unless extended by the federal government.

D. Availability

As required by TRIA, we have made available to you for lines subject to TRIA coverage for losses resulting from acts of terrorism certified under TRIA with terms, amounts and limitations that do not differ

materially from those for losses arising from events other than acts of terrorism.

E. Definition of Act of Terrorism

TRIA defines "act of terrorism" as any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States:

1. to be an act of terrorism;
2. to be a violent act or an act that is dangerous to human life, property or infrastructure;
3. to have resulted in damage within the United States, or outside of the United States in the case of an air carrier (as defined in section 40102 of Title 49, United States Code) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), or the premises of a United States mission; and
4. to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

But, no act shall be certified by the Secretary as an act of terrorism if the act is committed as part of the course of a war declared by Congress (except for workers' compensation) or property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.



DISCLOSURE FORM CLAIMS-MADE POLICY - COLORADO IMPORTANT NOTICE

THIS DISCLOSURE FORM IS NOT CONSIDERED PART OF THE POLICY. IT MERELY DESCRIBES SOME OF THE MAJOR FEATURES OF THE CLAIMS-MADE POLICY FORM. READ THE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. ONLY THE PROVISIONS OF THE POLICY DETERMINE THE SCOPE OF YOUR INSURANCE PROTECTION.

This policy is a claims-made policy. It applies only to claims made against the Insured after the inception date and before the end of the policy period involving wrongful acts that occur before or during the policy period. Upon termination of the policy, an Extended Reporting Period may be available.

OCCURRENCE VS. CLAIMS-MADE

There is no difference in the kinds of wrongful acts covered by either an occurrence policy or a claims-made policy. Claims for losses may be assigned to different policy periods, however, depending on which type of policy you have purchased.

In an occurrence policy, coverage is provided for liability because of wrongful acts that occur during the policy period, no matter when the claim is made.

In your claims made policy, coverage is provided for liability because of wrongful acts that occur during the policy period (or prior thereto if the retroactive date is prior to the policy inception date) provided the claim for loss is first made during the policy period. Under most circumstances, a claim is considered made when it is received and recorded by us; but sometimes a claim may be deemed made at an earlier time. This can happen when another claim for the same, interrelated, causally connected wrongful acts has already been made, or when the claim is received and recorded during an extended reporting period.

PRINCIPAL BENEFITS

This policy provides coverage for Zurich Private Solutions – Enhanced up to a maximum dollar limit specified in the policy.

The principal benefits and coverages are explained in detail in your claims-made policy. Please read it carefully and consult your agent about any questions you might have.

EXCEPTIONS, REDUCTION AND LIMITATIONS

Your claims-made policy contains certain exceptions, reductions and limitations. Please read them carefully and consult your agent about any questions you might have.

CLAIMS INFORMATION

To determine how much of your aggregate coverage remains available under the policy, you may obtain within thirty (30) days following written request, information about closed or paid claims, claims for which the reserves have been established, and claims for which the Insurer has received notices of occurrences which could give rise to claims.

RENEWALS AND EXTENDED REPORTING PERIODS

Your claims-made policy has some unique features relating to renewal, extended reporting periods, and coverage of occurrences with long periods of exposure. These special claims-made provisions are described below:

Renewals

In your claims made policy; coverage for liability resulting from a wrongful act that occurs: (a) during the policy period if the retroactive date coincides with the inception date of the policy; or (b) prior to the policy period if the retroactive date is prior to the policy inception date, provided the claim for loss is first made during the policy period.

If there is a retroactive date in your policy, no event or occurrence prior to that date will be covered under the policy even if reported during the policy period. It is therefore important for you to be certain that there are no gaps in your insurance coverage. These gaps can occur in several ways. Among the most common are:

- If you switch from an occurrence policy to a claims made policy, the retroactive date in your claims made policy should be no later than the expiration date of the occurrence policy.
- When replacing a claims made policy with a claims made policy, you should consider the following:
 - The retroactive date in the replacement policy should extend far enough back in time to cover any events with long periods of liability exposure; or
 - If the retroactive date in the replacement policy does not extend far enough back in time to cover events with long periods of liability exposure, you should consider purchasing an extended reporting period under the old claims made policy.

Extended Reporting Period

If a claim is made after the termination of your claims-made policy, you may not have coverage for that claim unless you purchase an Extended Reporting Period endorsement, which must be offered to you for at least a one (1) year period, at a premium not to exceed 200% of your terminated policy premium.

CAREFULLY REVIEW THE POLICY PROVISIONS REGARDING THE AVAILABLE EXTENDED REPORTING PERIOD, ESPECIALLY THE LENGTH OF COVERAGE AND PRICE, AND THE TIME DURING WHICH YOU MUST PURCHASE OR ACCEPT ANY OFFER OF EXTENDED REPORTING PERIOD.

Colorado Amendatory Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Producer:

BLAIS EXCESS & SURPLUS
Two Memorial City Plaza, 820 Gessner, #1750
Houston, TX 77024
USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Zurich Private Solutions – Enhanced

It is agreed that Subsection IV.F., of the COMMON POLICY TERMS is deleted in its entirety and is replaced with the following:

CANCELLATIONS

- 1 This policy may be canceled by the **Named Insured** by surrender of the policy to the Insurer or by mailing written notice to the Insurer stating when such cancellation shall take effect. If canceled by the **Named Insured**, the Insurer shall retain the customary short-rate proportion of the premium. In no event may the requested date of cancellation be greater than ten (10) days prior to the date the request is received by the Insurer.
- 2 This policy may be canceled by the Insurer by mailing written notice by certified mail or first class mail to the **Named Insured** at the address shown in the Declarations. Such cancellation shall be no fewer than forty-five (45) days from the date the notice is mailed unless the policy is canceled because the **Named Insured** has failed to pay a premium. In that event, such cancellation shall take effect no fewer than ten (10) days from the date the notice is mailed. The Insurer may cancel this policy for the following reasons:
 - a. nonpayment of premium;
 - b. a false statement knowingly made on the application for insurance; or
 - c. a substantial change in the exposure or risk from what was indicated on the application and underwritten as of the effective date of the policy unless the **Named Insured** has notified the Insurer of the change and the Insurer accepts such change.

If the policy is canceled by the Insurer, the earned premium shall be computed pro-rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter but not more than forty-five (45) days after the effective date of cancellation by the Insurer or after the date of entitlement established by notification of cancellation or as otherwise established. Failure to pay any premium adjustment at, on, or around the time of the effective date of cancellation shall not alter the effectiveness of cancellation.

NONRENEWAL

1. If the Insurer elects not to renew this policy, the Insurer will mail by certified mail or first class mail to the **Named Insured**, and mail to the agent, if any, written notice of nonrenewal. The Insurer will mail this notice to the address shown in the Declarations at least forty-five (45) days prior to the expiration of this policy.
2. If notice is mailed, proof of mailing will be sufficient proof of notice.
3. If either one of the following occurs, the Insurer is not required to provide written notice of nonrenewal:
 - a. the Insurer or an Insurer within the same insurance group has offered to issue a renewal policy; or
 - b. the **Named Insured** has obtained replacement coverage or agreed in writing to do so.

CONDITIONAL RENEWAL

1. If the Insurer elects to renew this policy and the renewal is subject to any of the following:

- a. increase in premium;
- b. change in Self Insured Retention;
- c. reduction in Limit of Liability; or
- d. reduction in coverage;

the Insurer will mail or deliver written notice of the change(s) to the **Named Insured**, at the address shown in the Declarations, at least forty-five (45) days before the anniversary or expiration date of the policy.

2. If renewal is subject to any condition described in 1.a. through 1.d. above, and the Insurer fails to provide notice forty-five (45) days before the anniversary or expiration date of this policy, the following procedures apply:

a. the present policy will remain in effect until the earlier of the following:

- (1) forty-five (45) days after the date of mailing or delivery of the notice; or
- (2) the effective date of replacement coverage obtained by the **Named Insured**.

b. if the **Named Insured** elects not to renew, any earned premium for the period of extension of the terminated policy will be calculated pro rata at the lower of the following rates:

- (1) the rates applicable to the terminated policy; or
- (2) the rates presently in effect.

c. if the **Named Insured** accepts the renewal, the premium increase, if any, and other changes are effective the day following this policy's anniversary or expiration date.

All other provisions of this policy remain unchanged.

Signed by: _____

Authorized Representative

Date

1/5/07

Colorado Amendatory Endorsement – Extended Reporting Period



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 00	12/13/2006	12/13/2007	12/13/2006	09340000		

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
 415 N. GRAND AVENUE
 PUEBLO, CO 81003-3111
 USA

Producer:

BLAIS EXCESS & SURPLUS
 Two Memorial City Plaza, 820 Gessner, #1750
 Houston, TX 77024
 USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Zurich Private Solutions -- Enhanced

It is agreed that Section II., of the COMMON POLICY TERMS is deleted in its entirety and is replaced with the following:

EXTENDED REPORTING PERIOD

- A. If the Insurer or the **Named Insured** fails or refuses to renew this policy, or if the **Named Insured** cancels this policy, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at the percent of the annualized policy premium set forth in Item 6.(A) of the Declarations to an Extended Reporting Period afforded under Coverage Sections 1, 2, and 3, if included, for an Extended Reporting Period of one (1) year following the effective date of the such nonrenewal or cancellation, but only with respect to covered **Wrongful Act** (under Coverage Section 1 and 3, if included) or **Wrongful Employment Act** (under Coverage Section 2, if included) taking place prior to the effective date of such nonrenewal or cancellation. The additional premium for one (1) year Extended Reporting Period may not exceed two hundred percent (200%) of the annual policy premium. The right to this Extended Reporting Period shall lapse unless written notice of an election to purchase this Extended Reporting Period, together with payment of the additional premium due, is given by the **Named Insured** and received by the Insurer within sixty (60) days following the nonrenewal or cancellation of the policy. If such written notice is not mailed to the Insurer within sixty (60) days or the premium is not paid when due, then the **Insured** shall not at a later date be entitled to purchase an Extended Reporting Period.
- B. The entire additional premium for the Extended Reporting Period shall be deemed fully earned and non-refundable as of the effective date of the Extended Reporting Period.
- C. The election of the Extended Reporting Period shall not in any way reinstate or increase the Limit of Liability in Item 3. of the Declarations. The Limit of Liability applicable to the Extended Reporting Period shall be the Limit of Liability remaining under this policy for the Policy Period.
- D. The offer of renewal terms and conditions or premiums different from those in effect shall not constitute refusal to renew.

All other provisions of this policy remain unchanged.

Signed by:


 Authorized Representative

Date

1/5/07

Prior Acts Exclusion



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Producer:

BLAIS EXCESS & SURPLUS
Two Memorial City Plaza, 820 Gessner, #1750
Houston, TX 77024
USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced Policy

It is agreed that:

The Underwriter shall not be liable for Loss on account of any Claim made against any Insured based upon, arising out of or attributable to **Wrongful Acts**, including **Interrelated Wrongful Acts**, committed, attempted or allegedly committed or attempted in whole or in part prior to September 26, 2006.

- All other terms and conditions remain unchanged.

Signed by: _____

Authorized Representative

Date

11/5/07



ZURICH

Specific Entity Exclusion

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Producer:

BLAIS EXCESS & SURPLUS
Two Memorial City Plaza, 820 Gessner, #1750
Houston, TX 77024
USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced Policy

It is agreed that:

The Underwriter shall not be liable for Loss on account of any Claim made against any Insured Person based upon, arising out of or attributable to any Claim brought or maintained by or on behalf of:

1. Arcapita, or any organization in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, by such organization; or
2. any past, present or future security holder or class of security holders of the entities included in (1) above; or
3. any subsidiary, trustee, receiver, assignee, successor in interest, director, officer, shareholder, partner, limited partner or beneficiary of the entities include in (1) above.

All other terms and conditions remain unchanged.

Signed by:

Authorized Representative

Date

1/5/07

Endorsement #5

Bodily Injury / Property Damage Exclusion (Absolute)



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Producer:

BLAIS EXCESS & SURPLUS
Two Memorial City Plaza, 820 Gessner, #1750
Houston, TX 77024
USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced Policy

It is agreed that:

1. Coverage Section 1, Paragraph 5 of Section IV.A., Exclusions, is deleted in its entirety and is replaced with the following:
based upon, arising out of or attributable to bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or destruction of any tangible property including loss of use thereof;
2. Coverage Section 2, Paragraph 6 of Section IV.A., Exclusions, is deleted in its entirety and is replaced with the following:
based upon, arising out of or attributable to bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person or destruction of any tangible property including loss of use thereof;

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

Signed by:

Authorized Representative

Date

11/5/07

Order of Payments Endorsement



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
 415 N. GRAND AVENUE
 PUEBLO, CO 81003-3111
 USA

Producer:

BLAIS EXCESS & SURPLUS
 Two Memorial City Plaza, 820 Gessner, #1750
 Houston, TX 77024
 USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced Policy

It is agreed that:

1. In the event of **Loss** arising from a **Claim** or **Claims** for which payment is due under the provisions of this policy but which **Loss** in the aggregate exceeds the remaining available Limit of Liability of this policy, the Underwriter shall:
 - (i) first pay such **Loss** for which coverage is provided under Insuring Clause A of the policy, then
 - (ii) with respect to whatever remaining amount of the Limit of Liability is available after payment of such **Loss**, pay such **Loss** for which coverage is provided under Insuring Clause B of the policy.
2. In the event of **Loss** arising from a **Claim** or **Claims** for which payment is due under the provisions of this policy (including those circumstances described in paragraph 1 above), the Underwriter shall at the written request of the **Parent Company**:
 - (i) first pay such **Loss** for which coverage is provided under Insuring Clause A of the policy, then
 - (ii) either pay such **Loss** or withhold payment for such **Loss** for which coverage is provided under Insuring Clause B of the policy.

In the event the Underwriter, pursuant to such written request, first pays such **Loss** for which coverage is provided under Insuring Clause A of the policy, the Underwriter shall at any time in the future, at the request of the **Parent Company**, make such **Loss** payment directly to an **Insured Person**. In the event the Underwriter, pursuant to such written request, withholds payment for such **Loss** for which coverage is provided under Insuring Clause B of the policy, the Underwriter shall at any time in the future, at the request of the **Parent Company**, release such **Loss** payment to the **Parent Company**.

3. This endorsement shall not increase the Underwriter's maximum Limit of Liability under this policy.

All other terms and conditions remain unchanged.

Signed by: _____

Authorized Representative

Date

1/5/07

Final Adjudication



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Producer:

BLAIS EXCESS & SURPLUS
Two Memorial City Plaza, 820 Gessner, #1750
Houston, TX 77024
USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced Policy: Coverage Section 1

It is agreed that Section IV (Exclusions), Item 13 is deleted in its entirety and replaced with the following:

13. Based upon, arising out of, or attributable to such **Insured** gaining any personal profit, remuneration or financial advantage to which such **Insured** was not legally entitled, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a gaining of personal profit, remuneration or financial advantage.

All other terms and conditions remain unchanged.

Signed by: _____

Authorized Representative

Date

1/5/07

Amend Severability

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Producer:

BLAIS EXCESS & SURPLUS
Two Memorial City Plaza, 820 Gessner, #1750
Houston, TX 77024
USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced: Common Policy Terms

It is agreed that Section IV.D. of the Common Policy terms is deleted in its entirety and replaced with the following:

D. REPRESENTATIONS AND SEVERABILITY

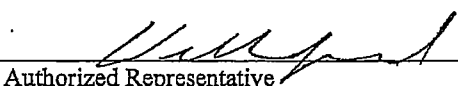
In granting coverage to the **Insureds** under any Coverage Section, the Insurer has relied upon the declarations and statements in the **Application** and upon any declarations and statements in the original written application submitted by the **Insureds** to another insurer with respect to the similar coverage incepting as of the respective **Continuity Date** set forth in Item 7. of the Declarations. All such declarations and statements are the basis of this policy and shall be considered as incorporated in and constituting part of this policy.

The **Insureds** represent that all such declarations and representations are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this policy. The **Insureds** agree that in the event that any such declarations and representations are untrue, this policy shall be void *ab initio* and shall not afford any coverage with respect to any of the following **Insureds**:

1. any **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**;
2. the **Company**, to the extent it indemnifies any **Insured Person** referenced in 1. above;
3. the **Company** and any **Benefit Program** if any **Executive Officer** of such **Company** or **Benefit Program** knew the facts that were not truthfully disclosed in the **Application**; and

whether or not the **Insured Person** or **Executive Officer** described in 1., 2., or 3. above knew that the **Application** contained such untruthful disclosure.

Signed by:


 Authorized Representative

Date

1/5/07

Amend Subsidiary Asset Threshold



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
 415 N. GRAND AVENUE
 PUEBLO, CO 81003-3111
 USA

Producer:

BLAIS EXCESS & SURPLUS
 Two Memorial City Plaza, 820 Gessner, #1750
 Houston, TX 77024
 USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced

It is agreed that:

1. Coverage Section 1, Director and Officers Liability, Paragraph 2 of Section V.C. is deleted in its entirety and replaced with the following:

However, if the fair value of all cash, securities, assumed indebtedness and other consideration paid by the **Company** for any such acquisition during the **Policy Period** exceeds twenty-five percent (25%) of the total consolidated assets of the **Named Insured** as reflected in the **Named Insured's** then most recent audited consolidated financial statements, no coverage shall be afforded under this Coverage Section to such organization and its **Insureds** unless (i) the **Named Insured** gives written notice of such acquisition to the Insurer within ninety (90) days together with such information as the Insurer may require, and (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the Insurer

2. Coverage Section 2, Employment Practices Liability, Paragraph 2 of Section VI.A. is deleted in its entirety and replaced with the following:

However, if, as a direct and immediate result of such acquisition, the total number of **Employees** of all **Companies** combined increases by more than twenty-five percent (25%), then no coverage shall be afforded under this Coverage Section to such organization and its **Insureds** unless (i) the **Named Insured** gives written notice of such acquisition to the Insurer within ninety (90) days together with such information as the Insurer may require, and (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the Insurer

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

Signed by: _____

Authorized Representative

Date

11/5/07

Professional Liability Exclusion: Medical

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Producer:

BLAIS EXCESS & SURPLUS
Two Memorial City Plaza, 820 Gessner, #1750
Houston, TX 77024
USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Private Company Management Liability Policy: Coverage Section 1 (Directors & Officers Liability Including Company Reimbursement)

It is agreed that the Insurer shall not be liable under Coverage Section 1 for Loss on account of any Claim made against any Insured based upon, arising out of or attributable to:

1. the rendering of, or actual or alleged failure to render, professional services in connection with the Company's business as a provider of medical services, including but not limited to:
 - a. providing medical, surgical, dental, psychiatric or nursing treatment, care, diagnosis or services, including the furnishing of food or beverages in connection therewith,
 - b. providing routine and/or esoteric testing services used in the diagnosis, monitoring and/or treatment of any disease or other medical condition,
 - c. furnishing or dispensing drugs or medical, dental or surgical supplies or appliances,
 - d. handling or conducting post mortem examinations,
 - e. providing veterinary services, or
 - f. providing services as a member of, or participating in, a formal medical peer review committee, board or similar medical peer group of the Company or any hospital or professional society; or
2. any advice actually or allegedly proffered by any Insured in connection with the above.

All other terms and conditions remain unchanged.

Signed by: _____

Authorized Representative

Date

1/15/07

Additional Named Insured

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
415 N. GRAND AVENUE
PUEBLO, CO 81003-3111
USA

Producer:

BLAIS EXCESS & SURPLUS
Two Memorial City Plaza, 820 Gessner, #1750
Houston, TX 77024
USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced Policy

It is agreed that:

1. Item 1 of the Declarations is amended by adding the following:

Small Smiles Dentistry of Albany, LLC
 Small Smiles Dentistry for Children, Albuquerque P.C.
 Small Smiles of East Albuquerque, P.C.
 Small Smiles of Atlanta, P.C.
 Small Smiles of Augusta, P.C.
 6th Street of Denver Dental Clinic, P.C.
 Small Smiles of Baltimore, P.C.
 Small Smiles Dental Clinic of Boise, PLLC
 Children's Dental Clinic of Charleston, LLC
 Small Smiles of Cincinnati LLC
 Small Smiles Dentistry for Children, P.C.
 Children's Medicaid Dental of Columbia, LLC
 Small Smiles of Columbus, LLC
 Small Smiles of Dayton, LLC
 Smile High Dentistry for Children, P.C.
 Children's Dental Clinic of Florence, LLC
 Small Smiles of Fort Wayne, LLC
 Children's Dental Clinic of Gary, LLC
 Children's Medicaid Dental of Greenville, LLC
 The Children's Dental Clinic of Indianapolis, LLC
 Dental Clinic of Indianapolis at Eagledale Plaza, LLC
 The Indian Springs Dental Clinic, LLC
 Small Smiles of Lawrence, LLC
 Small Smiles of Lynn, LLC
 Small Smiles of Macon, P.C.
 Small Smiles of Mattapan, LLC
 Small Smiles of Myrtle Beach, LLC
 Children's Dental Clinic of Oklahoma City, PLLC
 Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC
 Small Smiles of Omaha, P.C.
 Children's Medicaid Dental Clinic, P.C.
 DeRose Children's Dental Clinic, P.C.
 Small Smiles of Reno, LLC
 Small Smiles of Richmond, LLC
 Small Smiles of Roanoke, LLC
 Small Smiles Dentistry of Rochester, LLC
 Small Smiles of Roselawn, LLC

Small Smiles Dentistry for Children, Santa Fe, P.C.
Small Smiles of Savannah, P.C.
Small Smiles of Spartanburg, LLC
Small Smiles of Springfield, LLC
Small Smiles Dentistry of Syracuse, LLC
Children's Dental Clinic of Thornton, P.C.
Topeka Dental Clinic, LLC
Small Smiles of Toledo, LLC
Children's Dental Clinic of Tucson, L.L.C.
Children's Dental Clinic of Tulsa, PLLC
Small Smiles of Washington D.C., PC
Small Smiles of Wichita, LLC
Small Smiles of Worcester, LLC

ALL OTHER TERMS AN CONDITIONS REMAIN UNCHANGED

Signed by:

Authorized Representative

Date

1/5/07

Third Party Coverage



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750-00	12/13/2006	12/13/2007	12/13/2006	09340000	N/A	N/A

Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC
 415 N. GRAND AVENUE
 PUEBLO, CO 81003-3111
 USA

Producer:

BLAIS EXCESS & SURPLUS
 Two Memorial City Plaza, 820 Gessner, #1750
 Houston, TX 77024
 USA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

Zurich Private Solutions – Enhanced: Coverage Section 2

It is agreed that:

1. Subsection I. is amended by adding the following additional Insuring Clause:

The Underwriter shall pay on behalf of the **Insureds** all loss for which the **Insureds** become legally obligated to pay on account of any **Claim** by or on behalf of any natural person (other than a past, present or prospective **Employee** or shareholder of the **Company** in their capacity as such) for a **Wrongful Discrimination Act** taking place before or during the **Policy Period** if such **Claim** is first made against the **Insureds**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period.

2. Solely with respect to coverage afforded by reason of this endorsement:

- a. Item 3(A) of the Declarations Page: (A) Each Claim \$500,000
 (B) Each Policy Period \$500,000

The Limits of Liability and any Deductible are reduced or exhausted by Defense Costs and are a part of, not in addition to, the Limit of Liability as set forth on the Declarations Page.

- b. Item 5. Self-Insured Retention, Section 2, of the Declarations is amended to read as follows:

Deductible Amount : \$100,000

- c. Item 8. Pending or Prior Date, Section 2, of the Declarations is amended to read as follows:

Pending or Prior Date: 12/13/2006

- d. The term “**Wrongful Employment Act**” wherever used in this policy shall mean **Wrongful Discrimination Act**.

3. Section III, Definitions, is amended by adding the following:

Wrongful Discrimination Act means any act, error, omission, neglect, or breach of duty actually or alleged committed or attempted by the **Company** or by one or more **Insured Persons** in their capacities as such or by any other person for whom the **Insureds** are legally responsible, in connection with any actual or alleged violation of any federal, state, or local statute, regulation, ordinance, common law or public policy concerning discrimination or sexual harassment.

4. Solely with respect to coverage afforded by reason of this endorsement, the Underwriter shall not be liable for a **Wrongful Discrimination Act Claim** for that part of **Loss**, other than **Defense Costs**, on account of any **Claim** made against the **Insureds**,

- a. which is attributable to any non-monetary relief; or
- b. which is attributable to modifying any building or property in order to make said building or property more accessible or accommodating to any person with a disability, or to making any other accommodations for any person with a disability.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Signed by: _____

Authorized Representative

Date

1/15/07

Application For Zurich Private Solutions - Enhanced



PLEASE NOTE:

DIRECTORS AND OFFICERS LIABILITY INSURANCE, EMPLOYMENT PRACTICES LIABILITY INSURANCE AND FIDUCIARY LIABILITY INSURANCE ARE WRITTEN ON A CLAIMS MADE BASIS AND COVER ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COST. THIS APPLICATION, INCLUDING ALL MATERIALS SUBMITTED HEREWITH, SHALL FORM A PART OF THIS POLICY AND SHALL BE HELD IN STRICTEST CONFIDENCE.

For purposes of this application, the term Application, Claims, Insured, Policy Period and Defense Costs shall have the same definition as in those found in the Private Company Management Liability Policy (U-PDO-100-A).

INSTRUCTIONS

1. WHENEVER USED IN THIS APPLICATION, THE TERM "APPLICANT" SHALL MEAN THE PARENT COMPANY AND ALL OF ITS SUBSIDIARIES, UNLESS STATED TO BE CONTRARY HEREIN.
2. THIS APPLICATION MUST BE COMPLETED IN FULL INCLUDING ALL REQUIRED ATTACHMENTS; INCOMPLETE APPLICATIONS WILL NOT BE ACTED UPON. ALL APPLICANTS ARE REQUIRED TO COMPLETE THE GENERAL INFORMATION SECTION, AND APPLICATION SECTIONS 1 AND 6. APPLICATION SECTIONS 2-5 SHOULD BE COMPLETED ONLY TO THE EXTENT APPLICANT IS APPLYING FOR THE RESPECTIVE COVERAGE SECTION.
3. IF MORE SPACE IS NEEDED TO ANSWER A QUESTION, PLEASE ATTACH A SEPARATE SHEET WITH DETAILS.
4. THIS APPLICATION AND ALL ATTACHMENTS SHALL FORM A PART OF THE POLICY IF ISSUED AND SHALL BE HELD IN THE STRICTEST OF CONFIDENCE.

GENERAL INFORMATION

(TO BE COMPLETED BY ALL APPLICANTS)

1. REQUESTED COVERAGE

The Applicant requests coverage as described below under the Indicated Coverage Section(s):

PLEASE CHECK ALL THAT APPLIES:

COVERAGE SECTION	APPLICATION SECTION	REQUESTED LIMIT OF LIABILITY	REQUESTED SELF INSURED RETENTION	REQUESTED EFFECTIVE DATE
Directors and Officers Liability	1	\$10,000,000.00		09/26/2006
Employment Practices Liability	2	\$10,000,000.00		09/26/2006
Fiduciary Liability	3	0		
Crime	4	0		
Kidnap and Ransom	5	0		

2. a. Name of Parent Company: Small Smiles Holding Company, LLC

b. Address: 415 N. Grand Ave.
Pueblo, CO 81003

c. State of Incorporation: Delaware

d. Officer authorized to receive notice and information regarding the proposed policy

Contact Name: Joseph D. Bower, Esq.

Title: SVP Legal

Phone Number: 719-583-1800

E-mail address: jbower@forba.com

Website address: _____

Industrial Classification Code (SIC): _____

e. List of subsidiaries:

FORBA Holdings, LLC

FORBA NY, LLC

FORBA Services, INC

Please attach additional list of subsidiaries, (if necessary) Please see attached

f. Nature of Applicant's business:

General Dentistry, Dental Practice Management

g. Description of the Applicant:

☐ Privately held Corporation

☒ Limited Liability Corporation (LLC)

☐ Sole Proprietorship

☐ Other (please describe)

IF THE APPLICANT IS NOT PRIVATELY HELD, THE APPLICANT MAY BE INELIGIBLE TO PURCHASE THE PRIVATE COMPANY MANAGEMENT LIABILITY POLICY.

3. MATERIAL EVENTS

- a. During the past 18 months, has the Applicant publicly disclosed, completed or been in the process of completing the following:
- (i). Any actual or proposed merger, acquisition, tender offer or divestiture? ☒ Yes ☐ No (if "yes", attach details)
- (ii). Any new public offering of securities? ☐ Yes ☒ No (if "yes", attach details)
- b. In the last 12 months has the Applicant changed its independent CPA? ☐ Yes ☒ No (if "yes", attach details)
- c. In the last 24 months, did an independent CPA render a "going concern" opinion regarding the Applicant? ☐ Yes ☒ No (if "yes", attach details)

4. CURRENT AND PRIOR INSURANCE COVERAGE

- a. Please complete the following information regarding insurance maintained by the Applicant in the last 24 months. N/A

COVERAGE	LIMIT OF LIABILITY	SELF INSURED RETENTION	PREMIUM	INSURER	POLICY PERIOD
Directors and Officers Liability					
Employment Practices Liability					
Fiduciary Liability					
Crime					
Kidnap and Ransom					

- b. Have any loss payments been made under any of the coverage above? ☐ Yes ☒ No
- c. Has the Applicant given notice of any claim, circumstances, potential claims or loss to any insurer under any of the coverage above? ☐ Yes ☒ No (if "yes", attach details)

5. PRIOR ACTIVITY

Has the Applicant or any proposed for coverage herein been involved in any of the following in the past 5 years?

- a. Anti-trust, copyright or patent litigation? ☐ Yes ☒ No (if "yes", attach detail)
- b. Any alleged breach of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar law? ☐ Yes ☒ No (if "yes", attach detail)
- c. Any civil, criminal or administrative proceeding alleging violation of any federal or state securities law? ☐ Yes ☒ No (if "yes", attach details)
- d. Any other criminal proceeding or investigation? ☐ Yes ☒ No (if "yes", attach details)
- e. Any allegedly illegal discriminatory practices? ☐ Yes ☒ No (if "yes", attach details)
- f. Any representative proceeding, class action or derivative suit? ☐ Yes ☒ No (if "yes", attach details)

- g. Any claim for wrongful termination, employment related discrimination, sexual harassment or retaliatory treatment against employees, including complaints filed with the Equal Employment Opportunity Commission or any similar state or local agency authority?

☒ Yes ☐ No (if "yes", attach details)

6. ADDITIONAL INFORMATION

Please attach the following additional information:

- The most recent fiscal year-end consolidated financial statements for the Applicant. N/A
- The Applicant's by laws or other indemnification provision. Please see attached
- The latest CPA letter to management relating to internal controls and any written reports thereto. N/A
- The notice to stockholders and proxy statement for the most recent meeting of stockholders (if applicable). N/A
- The latest annual report to stockholders (if applicable). N/A
- Any Form 13D, 10-K, 10-Q, 8-K, or S-1 filed with the Securities and Exchange Commission within the last 12 months (if applicable). N/A
- Every prospectus for any securities offering completed in the last 12 months or currently planned or expected within the next year (if applicable). N/A

SECTION 1: DIRECTORS AND OFFICERS LIABILITY
(TO BE COMPLETED BY ALL APPLICANTS)

1. OPTIONAL COVERAGE REQUEST

Does the Applicant request Company Liability Coverage under the Directors and Officers Liability Coverage Section?

☒ Yes ☐ No

2. OWNERSHIP INFORMATION

- a. Number of Applicant's common equity shares outstanding: 100%
- b. Number of Applicant's common equity shareholders: 15
- c. Percent of Applicant's common equity shares owned directly or beneficially by all directors and officers as a group: 2.2%
- d. Is there any shareholder(s) or group of affiliated shareholders (including an employee stock ownership plan) who owns 10% or more of the Applicant's common equity shares directly or beneficially? ☐ Yes ☒ No

If the answer is "yes", please complete the following (attach additional pages if necessary):

NAME OF SHAREHOLDER	PERCENT (%) OWNED	AFFILIATION TO THE PARENT COMPANY

SECTION 2: EMPLOYMENT PRACTICES LIABILITY

(TO BE COMPLETED ONLY IF APPLICANT SEEKS EMPLOYMENT PRACTICES LIABILITY COVERAGE)

1. OPTIONAL COVERAGE REQUEST

Does the Applicant request an additional Limit of Liability for Defense Cost under the Employment Practices Liability Coverage Section?

☒ Yes ☐ No

2. EMPLOYEES

Please provide current employee breakdown by state (top 9 states):

STATE	# OF EMPLOYEES
SC	150
CO	145
OH	126

STATE	# OF EMPLOYEES
MA	110
IN	96
GA	95

STATE	# OF EMPLOYEES
OK	81
KS	76
NY	71

3. TURNOVER/TERMINATIONS

Please provide the following information for the last 3 years: N/A

YEAR	TOTAL NUMBER OF EMPLOYEES	NUMBER OF VOLUNTARY TERMINATED EMPLOYEES	NUMBER OF INVOLUNTARY TERMINATED EMPLOYEES

- a. Has the Parent Company had within the last 3 years any facility closings, consolidations, layoffs or staff reductions that resulted in changes of more than 5% of the workforce at any one business location?

☐ Yes ☒ No

If "yes", please provide the number of employees that were affected: _____

- b. Does the Parent Company anticipate within the next year any facility closings, consolidations, layoffs or staff reductions that will result in changes of more than 5% of the workforce at any one business location?

☐ Yes ☒ No

If "yes", please provide the number of employees that will be affected: _____

4. LOSSES

- a. Please indicate loss history (including defense costs) for claims first made in each of the last 3 years for wrongful termination, discrimination, sexual harassment or retaliation:

YEAR	NUMBER OF CLAIMS	DEFENSE COST PAID	LOSSES, JUDGMENT OR SETTLEMENT AMOUNT PAID
2006	1	0	0

- b. Please attach the following information for each such claim which has or is expected to exceed \$25,000 in loss (including defense costs: (i) date of claim; (ii) description of claim; (iii) total amount paid (itemized by defense costs, judgment, and settlement); (iv) whether the claim was or is an administrative action or lawsuit.

5. PROCEDURES

- a. Does the Parent Company have a Human Resource or Personnel Department? ☒ Yes ☐ No
If the answer is "no", who performs the human resource function? _____
- b. Does the Parent Company use an employment application for all employment applicants? ☒ Yes ☐ No
If the answer is "yes", please attach a copy.
- c. Has the Parent Company have an implemented anti-sexual harassment policy? ☒ Yes ☐ No
If the answer is "yes", please attach a copy.
- d. Does the Parent Company distribute an employment handbook to all employees? ☐ Yes ☒ No
If the answer is "yes", please attach a copy.
- e. Does the Parent Company have a formal progressive discipline policy? ☒ Yes ☐ No
- f. Is Parent Company and/or any subsidiary currently required to comply with any judicial or administrative agreement order, decree or judgment relating to employment? ☐ Yes ☒ No
If the answer is "yes", please attach a copy.
- g. When an employee is terminated:
- (i) Does the Parent Company require officer approval and are human resource personnel directly involved? ☒ Yes ☐ No
- (ii) Does the Parent Company consult an attorney prior to such termination? ☐ Yes ☒ No

SECTION 3: FIDUCIARY LIABILITY

(TO BE COMPLETED ONLY IF APPLICANT SEEKS FIDUCIARY LIABILITY COVERAGE)

I. PLAN ADMINISTRATION

a. Please provide the following information for each benefit plan of the Applicant for which coverage is requested:

PLAN NAME	TYPE OF PLAN	TOTAL PLAN ASSETS (\$)	ANNUAL CONTRIBUTIONS	NUMBER OF PARTICIPANTS

If there are additional benefit plans, attach additional pages if necessary:

b. Please provide the name(s) of the following professionals for each benefit plan as listed above:

Benefit Consultants: _____

Actuary: _____

Plan Administrator: _____

CPA: _____

Legal Counsel: _____

Independent Investment Manager: _____

c. If there is no independent investment manager with respect to any benefit plan, who is responsible for making the investment decisions? _____

d. Are any health and welfare plan benefits provided by insurance company(ies)? If the answer is "yes", please state the name of the insurance company(ies) providing such benefits: _____

e. With respect to any Employee Stock Option Plan (ESOP) proposed for coverage, please answer the following:

(i) Percent of the Parent Company and its subsidiaries' common equity shares owned directly or beneficially by the ESOP? _____

(ii) If the Parent Company is privately held, how often is the ESOP stock valued? _____

and by whom? _____

(iii) Please identify who holds the voting rights for the stock held by the ESOP? _____

Please identify such person's relationship with the Parent Company: _____

(iv) Have the assets of any ESOP been pledged as collateral for any financing arrangement? ☐ Yes ☐ No (if "yes", attach details)

2. RECENT CHANGES

- a. Have there been any mergers of benefit plans during the last 24 months? ☐ Yes ☐ No (if "yes", attach details)
- b. Have there been any benefit plan terminations during the last 24 months? ☐ Yes ☐ No (if "yes", attach details) including whether annuities were purchased and if so, from whom.
- c. Have there been any changes or amendments to the provisions of any benefit plan during the last 24 months? ☐ Yes ☐ No

3. COMPLIANCE

- a. Does each benefit plan conform to the standards of eligibility, participation, vesting, funding and other provisions of ERISA? ☐ Yes ☐ No (if "no", attach details)
- b. Has any benefit plan been reviewed within the last 24 months to assure that there are no violations of prohibited transactions and party in interest rules? ☐ Yes ☐ No (if "no", attach details) including why there has not been a review to date.
- c. Has there been actuarial certification within the last 24 months that each benefit plan is adequately funded? ☐ Yes ☐ No (if "no", attach details)
- d. Are there any outstanding delinquent contributions as respects any benefit plan? ☐ Yes ☐ No (if "yes", attach details)
- e. Has an event been reported to the Pension Benefit Guarantee Corporation (PBGC) as respects any benefit plan? ☐ Yes ☐ No (if "yes", attach details)

4. PAST ACTIVITIES

- a. Has any fiduciary of any benefit plan been:
- (i) Accused or found guilty of, or held liable for, a breach of trust? ☐ Yes ☐ No (if "yes", attach details)
- (ii) Convicted of criminal conduct? ☐ Yes ☐ No (if "yes", attach details)
- b. Have any claims (other than for benefits) been made during the last 12 months against any benefit plan, or any current or past fiduciaries of such benefit plan? ☐ Yes ☐ No (if "yes", attach details)

5. ADDITIONAL INFORMATION

Please attach the following additional information if applicable:

- a. As respects each of the 5 largest plans proposed for coverage, except health and welfare plan:
- (i) A copy of the most recent filed Form 5500; and
- (ii) A copy of the most recent audited financial statement for the benefit plans.
- b. As respect any non-qualified plan (plans not subject to Title I of ERISA) proposed for coverage:
- (i) A copy of the plan document; and
- (ii) A copy of the most recent audited financial statement for the benefit plans.