

# The Defender<sup>(SM)</sup>

(Side A DIC Directors and Officers Liability Insurance Policy)



**Hudson Financial Products** is a unit of Hudson Insurance Group (“Hudson”) offering primary, excess and Side A management liability insurance to executives across diverse industries. We offer our brokers and insureds high quality service which includes cutting edge products, quick turnaround, competitive rates and flexible underwriting with limits up to \$15,000,000. Our suite of product offerings include:

- ⇒ Director and Officer Liability insurance for public companies including primary, excess and Side A DIC products
- ⇒ Fiduciary Liability insurance for public and private companies
- ⇒ Private and Not-For-Product Package insurance products, which includes Director and Officer Liability, Employment Practices Liability, Fiduciary Liability and Crime insurance coverages

Our strength has always been our underwriting expertise and individual account underwriting. Pricing models often lump good risks in with the bad and punish some insureds. At Hudson, we believe in sound rating and underwrite each risk on its own merits. We work hard to establish long-term strategies that balance rates against our insured’s exposure.

Hudson is the US Insurance Division of Odyssey Re Holdings Corp. (“OdysseyRe”), a leading worldwide underwriter of property and casualty reinsurance and specialty insurance with \$3.1 billion in policyholders’ surplus. Hudson Insurance Group provides admitted and non-admitted insurance, predominantly through Hudson Insurance Company and Hudson Specialty Insurance Company, both rated “A” (Excellent) XV by A.M. Best Company.

Hudson and OdysseyRe have been underwriting Directors and Officers Liability insurance for 15 years, providing a stable market for our business partners. Hudson enjoys an excellent reputation for its fair and highly professional claims handling service because of our experienced staff and monitoring counsel.



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(Side A DIC Directors and Officers Liability Insurance Policy)

The first line of defense for directors and officers when it counts the most:

## THE PROTECTION OF PERSONAL ASSETS

The protection of personal assets is the cornerstone of "The Defender" a new enhanced Side A DIC directors and officers policy offered by Hudson Financial Products, a unit of Hudson Insurance Group.

### *Insurance that is dedicated to individual D&O's*

Concerns over increased liability for boards of directors has spurred more interest in Side A D&O products. A tougher business environment, volatile stock markets and a resurgence of D&O claim frequency are challenging management's ability to strike the right balance between the cost of insurance and the adequacy of the insurance they purchase. Under traditional D&O insurance the entity is covered for securities claims. In these economically turbulent times both directors and officers face potentially greater exposure than they have in the recent past. By "sharing" limits with the corporation, individual D&O's run the risk that their personal assets will not be adequately protected. "Side A" policies protect the assets of the D&O's and not the corporation. Side-A policies dedicate and guarantee a limit of liability will be there for them alone when the stakes are high and potentially involve the personal assets of the directors and officers.



## PERSONAL PROTECTION AGAINST “UNINDEMNIFIABLE” LOSS

Most claims against D&O’s are covered by a traditional D&O insurance policy or through company indemnification. However the risk of unindemnified loss is greater today than it was just a few years ago. Through a series of court decisions and legislative and regulatory actions the potential for unindemnifiable loss is much greater today than it was just a few years ago.

- ⇒ *Personal Protection against a company’s inability to indemnify due to insolvency* (tough economic conditions and reduced access to capital are heightening D&O’s exposure to unindemnified loss based on the company’s inability to pay).
- ⇒ *Personal Protection against a refusal by the corporation to indemnify; conduct not in “good faith” and lacking in “reasonable belief”* (in complex litigation the company may dispute the D&O’s right to indemnification; management turnover or changes in the composition of the Board precipitated by unusual events could obfuscate indemnification).
- ⇒ *State and federal statutes impose certain limitations on indemnification.*
- ⇒ *Derivative Lawsuit Judgments and Settlements.*
- ⇒ *Case Law Trends* (for example, In re: *The Walt Disney Company Derivative Litigation*, 825, A.2d 275 (Del. Ch. 2003); *Pereira v. Cogan*, 2003 WL 21039976 (S.D.N.Y.)).
- ⇒ *Regulatory limitations; Securities and Exchange Commission; Dept of Justice.*
- ⇒ *Public Policy Restraints on Indemnification.*



- ⇒ *No insurance available due to exclusionary language in the traditional D&O policy* (this is how Side A “Difference in Conditions” coverage is triggered).

## COVERAGE HIGHLIGHTS OF "THE DEFENDER" SIDE A DIC FORM

- ⇒ **BROAD COVERAGE:** Only 3 Exclusions built into the form (prior notice under section III. A (excluded only if the Claim is "accepted as covered" and only excludes a "portion of Loss...") and "deliberate" fraud/illegal profit...subject to a final adjudication "after exhaustion of all appeals").
- ⇒ **Special Coverage Feature:** If the "Follow Form Policy" (usually the primary ABC) has broader less restrictive versions of substantially similar exclusions (i.e. prior notice or fraud or illegal profit exclusions), then our policy "automatically" follows the more favorable wording; this protects insureds' by providing them with the broadest coverage while avoiding the dangerous pitfalls arising from inconsistencies contained in a layered D&O program tower; it also increases brokers' efficiency while reducing their own E&O exposure).
- ⇒ **Special Coverage Feature:** -Personal Profit/ Fraud Exclusion doesn't apply until after "...exhaustion of all appeals (including petitions for rehearing)..." (Compare favorably to other carriers forms that may allow a denial of coverage for fraud or personal profit with a lower court ruling).
- ⇒ **No Pollution, No BIPD, ERISA or "One versus One" exclusions.**
- ⇒ **CUTTING EDGE FOLLOW FORM POLICY LANGUAGE ELIMINATES INCONSISTENCIES BETWEEN OUR "SIDE A DIC" FORM AND THE UNDERLYING "FOLLOW FORM" POLICY...** See Insuring Agreement I.(B) which reads in its entirety: (B) "Except as may otherwise be enhanced or broadened by a specific provision herein, this Policy shall follow form of all provisions in the Follow Form Policy as in effect at the time the Follow Form Policy incepts".
- ⇒ **FULL SEVERABILITY** of representations and exclusions; non-imputation; See Section IV.(J) "Representations of Insured Executives, Non-Rescindability and Full Severability"; Non-Rescindable, fully severable Application.

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## COVERAGE HIGHLIGHTS OF "THE DEFENDER" SIDE A DIC FORM con't

- ⇒ All Key Definitions follow the "Follow Form Policy"...see Section II. "Definitions" (including but not limited to the "Awareness Provision").
- ⇒ Awareness Provision allows for circumstances during the Discovery Period...see Section IV.(D).
- ⇒ Definition of "Claim" includes a "subpoena", "formal or informal investigation" or a "formal or informal written request or demand for an Interview from any governmental entity, (i.e. SEC, state AG's, DOJ).
- ⇒ Very competitive "Interrelated Wrongful Acts" definition (compare to other competitor's forms).
- ⇒ Very competitive definition of "Loss" including expressed limited factors to be considered in choosing applicable law with "...Insurer shall not challenge..." language; Definition of Loss includes liability for "Taxes".
- ⇒ Explicit coverage for defense/settlement/ judgments involving Section 11 or 12 claims.
- ⇒ Definition of "Wrongful Act" expressly includes "an actual or alleged act, error or omission, misstatement, misleading statement, neglect or breach of duty as a fiduciary of an employment benefit plan or other plan governed by the Employee Retirement Income Security Act of 1974..."
- ⇒ No Explicit Reference to the "Application" in the preamble at the top of page one.
- ⇒ Explicit coverage for ERISA Wrongful Acts found in the definition of "Wrongful Acts".
- ⇒ Payment of Loss within 90 days if other sources of indemnification or insurance fail to pay within 60 days...see Section IV.(B) (2).
- ⇒ Non cancellable policy (except for non-pay).
- ⇒ Policy is not rescindable for any reason.
- ⇒ Worldwide Coverage.
- ⇒ Extradition Coverage included in the form.
- ⇒ Advancement of Defense Expenses "as soon as practicable" but no later than 90 days.
- ⇒ No mandatory panel counsel.



The descriptions herein are a summary only. They do not include the complete terms, conditions and exclusions contained in the policy. Please read the actual policy carefully and in its entirety for complete details on coverage and exclusions. In addition actual quotes may modify policy coverage and include limitations of coverage or exclusions that are contrary to the descriptions provided herein. All coverages are subject to underwriting for eligibility.

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