

# DIRECTORS, OFFICERS, INSURED ENTITY AND EMPLOYMENT PRACTICES INSURANCE COVERAGE FORM

NOTICE: This is a Claims Made and Reported Coverage Form.

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Common Policy Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any "individual insured" or "organization".

Other words and phrases that appear in quotation marks have special meaning. Refer to Section II - Definitions.

In consideration of the payment of the premium and reliance upon the statements made and information furnished to us as part of the "application", and subject to all the provisions of this policy, we agree to provide the insurance described in this Coverage Form and its applicable endorsements.

## SECTION I - INSURING AGREEMENTS

### 1. Coverage A. Directors and Officers Liability

We will pay on behalf of the insured all "loss" that the insured becomes legally obligated to pay because of a "claim" first made against the insured during the policy period for "wrongful acts":

- a. Arising solely out of the "individual insured's" performance of his or her duties on behalf of the "organization"; or
- b. Attributed to the "organization".

### 2. Coverage B. Employment Practices Liability

We will pay on behalf of the insured all "loss" that the insured becomes legally obligated to pay because of a "claim" first made against the insured during the policy period for "wrongful employment acts" or "third party wrongful acts":

- a. Arising solely out of the "individual insured's" performance of his or her duties on behalf of the "organization"; or
- b. Attributed to the "organization".

### 3. Claims Made and Reported

The insured must, as a condition precedent to coverage, report any "claim" to us as soon as practicable, but in no event later than 60 days after the expiration of the Coverage Part.

### 4. Defense

- a. We have the right and duty to defend the insured against any "claim" to which this insurance applies, even if the allegations of the "claim" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "claim" to which this insurance does not apply.
- b. "Defense costs" are payable in addition to the applicable Aggregate Limit of Insurance.
- c. Our right and duty to defend any "claim" ends when we have used up the applicable Aggregate Limit of Insurance in payment of "loss".
- d. We will not settle any "claim" without your written consent. Such consent will not be unreasonably withheld. If you refuse to consent to a settlement recommended by us and acceptable to the claimant, then our Limits of Insurance with respect to the "claim" will be reduced by:
  - (1) The amount of "loss" for which the "claim" could have been settled plus all "defense costs" incurred prior to the date of the refusal; and

- (2) 50% of all subsequent covered "defense costs" in excess of the amount incurred in (1) above, which sum will not exceed the unexhausted Limits of Insurance specified in Item 1. or Item 4. of the Coverage Part Declarations.

The remaining 50% of "defense costs" and all subsequent "loss" will be borne uninsured by you and at your own risk.

In this event, we may, at our sole discretion, tender a check to you for the recommended settlement amount and will be relieved of any further duty or obligation, other than for covered "defense costs" referenced above.

- e. If there is a "settlement opportunity" and:

- (1) Your consent is provided in writing to the settlement within 30 days of the date you are first made aware of the "settlement opportunity"; and
- (2) Your consent is provided within the first 90 days after the "claim" is both made and first reported to us;

then, in the event the "claim" settles as a result of such "settlement opportunity", the retention applicable to the "claim" will be reduced by 25% for such "claim". Both (1) and (2) are conditions to such reduction.

## 5. Allocation

Subject to this Section, if in any "claim" the insureds incur both "loss" covered by this policy and "loss" not covered by this policy either because the "claim" against the insureds includes both covered and uncovered matters or because the "claim" is made against both insureds who are afforded coverage for such "claim" and others, including insureds, who are not afforded coverage for such "claim", both the insureds and we agree to use our best efforts to 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; provided however that 100% of any "defense costs" incurred by insureds in such "claim" will be allocated to covered "loss".

In any arbitration, suit or other proceeding among us, no presumption shall exist concerning what is a fair and proper allocation between covered "loss" and uncovered "loss".

## 6. Coverage Extensions

### a. Spousal Provision

This insurance also applies to the lawful spouse or "domestic partner" of an "individual insured", but only for "claims" arising out of any "wrongful acts", "wrongful employment acts" or "third party wrongful acts" of the "individual insured".

### b. Worldwide Provision

This insurance applies to "wrongful acts", "wrongful employment acts" or "third party wrongful acts" occurring anywhere in the world provided the "claim" is first made against an insured in the United States of America (including its territories and possessions), Puerto Rico or Canada.

### c. Outside Directorship

This insurance applies to "individual insureds" who hold an official position as a director in another nonprofit entity but only if it is with your specific, written permission. The nonprofit entity must qualify as such under Section 501 (c) of the Internal Revenue Code of 1986 (as amended). Exclusion 16. Other Capacity does not apply for the above situation. This coverage will be excess of any other insurance available to the "individual insured".

## SECTION II - DEFINITIONS

### 1. "Application" means:

- a. An application, whether it is ours or another's, and any material submitted for this coverage; and
- b. Any application and materials submitted for all the previous policies issued by us providing you continuous coverage until the effective date of this policy.

2. **"Claim"** means:

- a. A written demand for monetary relief received by an insured seeking to hold the insured responsible for a "wrongful act", "wrongful employment act", or "third party wrongful act" including, but not limited to, the service of suit or the institution of arbitration or mediation proceedings against the insured;
- b. A judicial or administrative proceeding initiated against an insured seeking to hold the insured responsible for a "wrongful employment act" or a "third party wrongful act", including any proceeding conducted by the Equal Employment Opportunity Commission or similar federal, state or local agency and any appeal therefrom;
- c. A written demand for non-monetary or injunctive relief received by an insured seeking to hold the insured responsible for a "wrongful act", "wrongful employment act", or "third party wrongful act" including, but not limited to, the service of suit or the institution of arbitration or mediation proceedings against the insured;
- d. A civil proceeding against any insured seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
- e. A criminal proceeding against any insured, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;
- f. A civil, administrative or regulatory proceeding against any insured commenced by the filing of a notice of charges or similar document;
- g. A civil, criminal, administrative or regulatory investigation commenced by the service upon or other receipt by any insured of a written notice, investigative order, or subpoena from the investigating authority identifying such insured as an individual or entity against whom a proceeding described in paragraphs c., d., e. or f. immediately above may be commenced;
- h. A written request of the insured to toll a statute of limitations relating to a "claim" described in paragraphs a. through g. immediately above;

- i. An official request for the "extradition" of any "individual insured" or the execution of a warrant for the arrest of any "individual insured" where such execution is an element of "extradition"; or
- j. A target letter, Wells Notice or other written notice from the investigating authority identifying by name the "individual insured" as an individual against whom a proceeding may be commenced.

However, "claim" does not include a labor or grievance arbitration or proceeding which is subject or pursuant to a collective bargaining agreement.

A "claim" will be considered first made when an insured, its legal representative or agent first receives written notice of a "claim". If more than one "claim" arises out of the same "wrongful act", "wrongful employment act", "third party wrongful act", or an "interrelated wrongful act", they will be deemed a single "claim" to be first made on the date the earliest of the "claims" was made.

- 3. **"Defense costs"** means reasonable and necessary fees, costs and expenses resulting from the defense and appeal of any "claim" against the insured, excluding salaries and bonuses of the "organization's" officers or "employees." "Defense costs" includes premiums for any appeal bond, attachment bond or similar bond.
- 4. **"Discrimination"** means any actual or alleged:
  - a. Violation of any employment discrimination law;
  - b. Disparate treatment of, or the failure or refusal to hire a claimant because he or she is or claims to be a member of a class which is or is alleged to be legally protected.
- 5. **"Domestic partner"** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.
- 6. **"Employee"** means any natural person whose labor or service is engaged by and directed by the "organization" while performing duties related to the conduct of the "organization's" business. "Employee" includes leased, part-time, seasonal and temporary workers, volunteers and interns.

"Employee" also means any natural person who is an independent contractor for the "organization", provided:

- a. Such individual performs work or services for or on behalf of the "organization"; and
  - b. The "organization" provides indemnification to such individual in the same manner as that provided to the "organization's" employees.
7. **"Extradition"** means any formal process by which an "individual insured" located in any country is or is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a "wrongful act", "wrongful employment act" or "third party wrongful act".
8. **"Harassment"** means any actual or alleged unwelcome sexual advances, requests for sexual favors or any other conduct of a sexual nature:
- a. Which is made a term of condition of claimant's employment or advancement;
  - b. Which the submission to or rejection of is used as a basis for decisions affecting the claimant; or
  - c. Which has the purpose or effect of creating an intimidating, hostile or offensive work environment.
9. **"Individual insureds"** means any person(s) who were, now are, or will be:
- a. Directors, trustees, officers, "employees", or committee members of the "organization", including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy; or
  - b. Any person(s) who were, now are, or will be members of the Advisory Board of the "organization", including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
10. **"Interrelated wrongful acts"** means all "wrongful acts", "wrongful employment acts," or "third party wrongful acts" that have in common any fact, circumstance, situation, event, transaction, cause or a series of causally or logically connected facts, circumstances, situations, events, transactions or causes.

11. **"Loss"** means damages and settlements which an insured is legally obligated to pay as a result of a "claim" for a "wrongful act" or "wrongful employment act", or "third party wrongful act", pre-judgment and post-judgment interest awarded by a court and punitive or exemplary damages to the extent such damages are insurable under applicable law.

For the purpose of determining the insurability of punitive damages and exemplary damages, the laws of the jurisdiction most favorable to the insurability of the damages will control, provided that the jurisdiction has a substantial relationship to the relevant insured or to the "claim" giving rise to the damages.

"Loss" also means, with respect to any "claim" arising out of a "wrongful employment act" or "third party wrongful act", front-pay and back-pay, and liquidated damages awarded pursuant to the Age Discrimination in Employment Act, the Equal Pay Act or the Family Medical Leave Act.

"Loss" does not include:

- a. Any amount for which the insured is not financially liable or legally obligated to pay;
- b. The multiplied portion of any multiple damage award;
- c. Damages owed based on an express obligation by written or oral agreement or amounts owed under any contract or agreement;
- d. Taxes, fines or penalties; provided, however, this limitation does not include the ten percent penalty excise tax imposed upon any "individual insureds" pursuant to 26 U.S.C. § 4558(a)(2) for participation in an excess benefit transaction;
- e. Matters uninsurable under the laws pursuant to which this policy is construed;
- f. The cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;
- g. Any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person;

- h. Any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar;
- i. Any sum, amount or payment which constitutes restitution or disgorgement;
- j. Employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, deferred cash incentive compensation or any other type of compensation, improper payroll deductions, severance pay, unpaid wages and commissions, compensation for vacation and sick days, medical and insurance benefits, amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract, and overtime pay for hours actually worked or labor actually performed by any "employee" of the "organization";
- k. Deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions, non-deferred cash incentive compensation; or
- l. Liquidated damages, except to the extent specifically included as "loss" above.

In addition, "loss" does not include the cost of any remedial, preventative or other non-monetary relief, including but not limited to any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority.

12. **"Non-indemnifiable loss"** means "loss" for which an "organization":
- 1. Has not indemnified, and is not permitted or required to indemnify, an "individual insured" pursuant to law or contract or the charter, by laws, operating agreement or similar documents of the "organization"; or

- 2. Does not indemnify an "insured individual" because of either 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 organization, or because of the organization becoming a debtor-in-possession.

13. **"Organic pathogen"** means any organic irritant or contaminant, including but not limited to mold, fungus, bacteria or virus, or any of their by-products such as mycotoxin, mildew, or biogenic aerosol.

14. **"Organization"** means you and your "subsidiaries" and includes a debtor-in-possession or the bankruptcy estate of the "organization" under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

15. **"Personal injury offense"** means:

- a. False arrest, detention or imprisonment;
- b. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor; or
- c. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services.

- 16. "Pollutants"** means any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, including materials to be recycled, reconditioned, or reclaimed. "Pollutants" will also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric, magnetic or electromagnetic fields.
- 17. "Retaliation"** means any actual or alleged retaliatory treatment against an "employee" because of:
- The exercise of, or attempt to exercise, an "employee's" rights under law;
  - An "employee's" disclosure of, or threat to disclose to a governmental agency or superior, acts of actual or alleged wrongdoing by an insured; or
  - The filing of a claim under federal, state or local whistle-blower laws including the federal False Claims Act.
- 18. "Settlement opportunity"** means a settlement that is within the policy Limit of Insurance, is recommended by us and is agreed to by the claimant.
- 19. "Subsidiary"** means any entity, as of the effective date of the policy, in which you own or control, directly or indirectly, the right to elect or appoint more than 50% of the entity's directors, trustees, or managers, and that entity is named in the "application".
- 20. "Third party wrongful act"** means "discrimination", including "harassment", by any insured against any natural person who is not an "employee".
- 21. "Whistleblower conduct"** means any of the activity set forth in 18 U.S.C. § 1514A(a), engaged in by a whistleblower with a federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. § 1514A(b).
- 22. "Wrongful act"** means any actual or alleged act, error, omission, misstatement, misleading statement, neglect, breach of duties, "personal injury offense" or violations of the Sherman Antitrust Act or similar federal, state or local statutes or rules.
- By the "organization";
  - By an "individual insured", arising solely from duties conducted on behalf of the "organization"; or
  - Asserted against an "individual insured" because of an actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duties by the "organization".
- A "wrongful act" does not include any "wrongful employment act" or "third party wrongful act".
- 23. "Wrongful employment act"** means any actual or alleged act of the following:
- "Discrimination";
  - "Harassment";
  - "Retaliation";
  - "Wrongful termination";
  - Violation of the Uniformed Services Employment & Reemployment Rights Act;
  - Violation of the Family and Medical Leave Act of 1993;
  - Violation of state law having the same or substantially similar purpose as the Acts in e. and f. above;
  - Breach of any express or implied employment contract; or

- i. Acts described in clauses a. through h. above, arising from the use of the "organization's" internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to use of the "organization's" internet, e-mail, telecommunication or similar systems.

**24. "Wrongful termination"** means termination of an employment relationship in a manner which is illegal and wrongful or in breach of an implied agreement to continue employment. However, "wrongful termination" does not include any breach of a written employment contract.

### **SECTION III - EXCLUSIONS**

This insurance does not apply to any "loss" or "defense costs" in connection with any "claim" made against an insured, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving:

#### **1. Bodily Injury or Property Damage**

Any actual or alleged bodily injury, sickness, humiliation, mental anguish, emotional distress, assault, battery, disease or death of a person, or theft, conversion, misappropriation, damage to or destruction of any tangible property including any loss of use or slander of title. This exclusion does not apply to "claims" for mental anguish, emotional distress, invasion of privacy, or humiliation, that result from a "wrongful employment act" or "third party wrongful act".

#### **2. Professional Liability**

Medical malpractice or counseling or any error or omission by a professional while rendering services, including the failure to render services. Provided, however, this exclusion does not apply to any "claim" brought by a securities holder of the "organization" in his, her or its capacity as such alleging failure to supervise those who performed or failed to perform such professional services, provided that such securities holder action is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation of, or intervention of, any insured.

#### **3. Contractual Liability**

Liability under any contract or agreement except liability that would exist even in the absence of the contract or agreement. However, we will indemnify the insured for "defense costs" but only with respect to a "claim" that alleges a breach of an express or implied employment contract.

#### **4. Pending and Prior Litigation**

Any litigation pending as of or prior to the effective date of this policy; provided that, if this policy is a renewal of a policy or policies previously issued by us and if the coverage provided by us was continuous from the effective date of the first policy to the effective date of this policy, the reference in this exclusion to effective date will mean the effective date of the first policy under which we first provided continuous coverage to you.

#### **5. Prior Knowledge**

Any actual or alleged act, error or omission, breach of duty or circumstance that an insured:

- a. Had knowledge of prior to the effective date of the policy; and
- b. Had a reasonable belief the actual or alleged act, error or omission, breach of duty or circumstance could result in a "claim";

provided that, if this policy is a renewal of a policy or policies previously issued by us and if the coverage provided by us was continuous from the effective date of the first policy to the effective date of this policy, the reference in this exclusion to effective date will mean the effective date of the first policy under which we first provided continuous coverage to you.

#### **6. Pollution**

The actual, alleged or threatened discharge, dispersal, release or escape of "pollutants", or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "pollutants".

## **7. Nuclear, Biological and Chemical Materials**

- a. The use, release or escape of nuclear materials, or any resulting nuclear reaction or radiation or radioactive contamination; or
- b. The dispersal or application of pathogenic or poisonous biological or chemical materials.

## **8. Fraud**

Any fraudulent, dishonest, or criminal act. However, this exclusion does not apply to "defense costs" or "loss" incurred until such conduct is established in a final and non-appealable judgment or adjudication in the underlying action to be fraudulent, dishonest or criminal.

The "wrongful act" of any "individual insured" will not be imputed to any other "individual insured".

## **9. Illegal Profits**

The gain of any profits, remuneration or advantage to which an insured was not legally entitled. However, this exclusion does not apply to "defense costs" or "loss" incurred until such conduct is established in a final and non-appealable judgment or adjudication in the underlying action.

The "wrongful act" of any "individual insured" will not be imputed to any other "individual insured".

## **10. Labor Disputes and Negotiations**

Any lockout, strike, picket line, replacement of worker(s) or other similar actions resulting from labor disputes or labor negotiations. However, this exclusion does not apply to a "claim" for actual or alleged "retaliation" from the foregoing.

## **11. Labor Relations Acts**

- a. The Fair Labor Standards Act (except the Equal Pay Act);
- b. The National Labor Relations Act;
- c. The Worker Adjustment and Retraining Notification Act;
- d. The Consolidated Omnibus Budget Reconciliation Act of 1985;
- e. The Occupational Safety and Health Act;

- f. Any workers' compensation, unemployment insurance, social security, or disability benefits law;
- g. The Racketeering Influence and Corrupt Organizations Act;
- h. The Federal False Claims Act; or
- i. Other similar provisions of any federal, state or local or common law or any rules or regulations promulgated under any of the foregoing.

However, this exclusion does not apply to a "claim" for actual or alleged "retaliation" arising from your violation of such law.

## **12. ERISA**

Any pension, profit sharing, welfare benefit or other employee benefit program established in whole or part for the benefit of any "individual insured", or based upon, arising out of or in any way involving the Employee Retirement Income Security Act of 1974 (except Section 510 thereof) or any amendments to the Act or regulations promulgated thereunder or similar provisions of any federal, state or local law or common law. However, this exclusion does not apply to any "claim" for actual or alleged "retaliation" with regards to benefits paid or payable.

## **13. Copyright, Patent or Trademark Infringement**

Infringement of a copyright, patent or trademark.

## **14. Accommodations for Disabled Persons**

Any alleged or actual failure of any building or property to comply with any federal, state or other statute or code which requires any building or property to be more accessible or accommodating to any disabled person.

## **15. Insured vs. Insured**

Any "claim" by, at the behest of, or on behalf of the "organization" or any "individual insured". However, this exclusion does not apply to:

- a. A "claim" brought by an "individual insured" for a "wrongful employment act";

- b. Any derivative "claim" made on behalf of the "organization" by a member, an attorney general or any other such representative party if such action is brought and maintained totally independently of and totally without the solicitation, assistance, active participation or intervention of any "individual insured" or the "organization". However, that "whistleblower conduct" by an "individual insured", other than a director or equivalent position, will not be considered solicitation, assistance, active participation, or intervention of an "individual insured";
- c. Any "claim" that is brought or maintained by or on behalf of any bankruptcy or insolvency trustee or bankruptcy appointed representative of the "organization", or receiver, examiner, liquidator or similar official or creditors committee for the "organization" or any assignee of such trustee, examiner, receiver or similar official or creditors committee;
- d. Any "claim" that is brought or maintained by any insured in the form of a cross claim, third party claim or other proceeding for contribution or indemnity which is part of, and directly results from a "claim" that is covered by this Coverage Part;
- e. Any "claim" that is brought or maintained by any former director or officer of the "organization" and where the "claim" is solely based upon and arising out of "wrongful acts" committed subsequent to the date such director or officer ceased to be a director or officer of the "organization" and where the "claim" is first made two years subsequent to the date such director or officer ceased to be a director or officer of the "organization"; or
- f. Any "claim" by or on behalf of the "organization" brought and maintained in any non-common law jurisdiction outside the United States.

#### **16. Other Capacity**

Any act or omission by an insured in his or her capacity with an entity other than the "organization".

#### **17. Securities Liability Exclusion**

A violation or alleged violation of:

- a. The Federal Securities Act of 1933;
- b. The Securities Exchange Act of 1934;
- c. The Investment Company Act of 1940 or any other federal law with respect to the regulation of securities;
- d. Any state securities or blue sky law; or
- e. Any provision of the common law imposing liability in connection with the offer, sale, or purchase of securities.

#### **18. Unpaid Compensation**

Improper payroll deductions, unpaid wages, misclassification of exempt or non-exempt employee status, compensation earned by or due to the claimant but not paid by the insured (including, but not limited to, commission, vacation and sick days, retirement benefits, and severance pay), overtime pay for hours actually worked or labor actually performed by any "employee" of the "organization". However, this exclusion does not apply to any back pay or front pay allegedly due as the result of "discrimination", or that part of any "claim" alleging "retaliation".

#### **19. Asbestos**

- a. The specifications of any product, material or process containing asbestos;
- b. The failure to detect the existence of, or determine the amount of, asbestos in any product material or process;
- c. The failure to warn of the existence of asbestos in any product, material or process;
- d. The failure to recommend the removal of asbestos in any product, material or process;
- e. Any other alleged failure to properly act in response to the presence of asbestos in any product, material or process; or
- f. Professional services rendered in the abatement, replacement or removal of any product, material or process containing asbestos.

## SECTION IV - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below determine the most we will pay regardless of the number of:
  - a. Insureds;
  - b. "Claims" made; or
  - c. Persons or "organizations" making "claims".
2. The Directors and Officers Aggregate Limit is the most we will pay under Coverage A for all "loss", due to "wrongful act" "claims".
3. The Employment Practices Aggregate Limit is the most we will pay under Coverage B for all "loss", due to "wrongful employment act" or "third party wrongful act" "claims".
4. If both Coverage A and Coverage B apply to a "claim" arising out of the same "wrongful act", "wrongful employment act", "third party wrongful act", or an "interrelated wrongful act", the largest aggregate limit from one of the Coverages will be the maximum Limit of Insurance available for the "claim" .

The Limits of Insurance for this Coverage Part apply separately to each consecutive annual period starting with the beginning of the policy period shown in the Common Policy Declarations. However, if:

- a. This Coverage Part is issued for a period of more than twelve months but less than twenty-four months; or
- b. The policy period is extended after issuance for an additional period of less than twelve months,

then the time periods exceeding the standard twelve- month policy period described in a. and b. will be deemed part of the last preceding period for the purpose of determining the Limits of Insurance.

Any Extended Reporting Period, if applicable, will be deemed part of the last policy period for the purpose of determining the Limits of Insurance.

## SECTION V - RETENTION

1. For each "claim":
  - a. The insured is responsible for the total of "loss" and "defense costs" up to the applicable Retention shown in the Coverage Part Declarations; and

- b. We will only pay for "loss" and/or "defense costs" if the total of "loss" and/or "defense costs" that is otherwise payable under this insurance exceeds the applicable Retention shown in the Coverage Part Declarations.
2. If we, at our sole discretion, elect to pay any part or all of the Retention, the insured must repay this amount to us upon demand.
3. Any Retention shown in the Coverage Part Declarations is not applicable to a "claim" for a "non-indemnifiable loss".
4. Solely with respect to the above, we agree that we will not seek to rescind the policy with respect to any "individual insured" who did not know the facts misrepresented or omitted.
5. You must indemnify an "individual insured" to the fullest extent permitted by law and must take all necessary steps to do so. Paragraph 3. does not apply if you cannot legally indemnify an "individual insured" because of the appointment by a 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 you, or because you become a debtor-in-possession.

## SECTION VI - CONDITIONS

### A. CLAIMS CONDITIONS

#### 1. Insured's Duties When There is a "Claim"

As a condition precedent to the right of coverage provided by this Coverage Part, the insured must do the following:

- a. If a "claim" to which this Coverage Part applies is made against an insured, the insured must give written notice, as soon as practicable, but in no event later than 60 days after the expiration of the Coverage Part to:

Western World Insurance Group  
400 Parson's Pond Drive  
Franklin Lakes, NJ 07417  
Attn: Claims Department

Written notice must include every demand, notice, summons or other process received directly by the insured or the insured's representatives.

- b. Cooperate with us. We may require that the insured submit to examination under oath, produce and make available all records, documents and other materials, and attend hearings, depositions and trials. The insured must assist us in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.
- c. Not admit liability, settle any claims, or assume any obligations without our prior written consent.

**2. Reporting of a Possible "Claim"**

If during the policy period, any insured first becomes aware of a specific "wrongful act", "wrongful employment act" or "third party wrongful act" that could result in a "claim" and gives written notice to us during the policy period of:

- a. The potential claimant's name and address;
- b. A chronological description of the events that are involved; and
- c. An explanation of the type of "claim" that is anticipated,

then any "claim" arising out of the "wrongful act" or "wrongful employment act" or "third party wrongful act" which is subsequently made against the insured will be deemed to have been made at the time we received the written notice from the insured.

**B. GENERAL CONDITIONS**

**1. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to you written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**2. Extended Reporting Period**

- a. If this Coverage Part is cancelled or not renewed, you have the right to purchase an Extended Reporting Period. The Extended Reporting Period applies only to "claims" for a "wrongful act", "wrongful employment act" or "third party wrongful act" committed prior to the termination of this coverage and otherwise insured by this Coverage Part. However, you must notify us in writing of your decision to purchase the Extended Reporting Period and the premium must be paid within 30 days of the termination date of this coverage. The right to purchase an Extended Reporting Period does not apply if the cancellation was for non-payment of premium or non-compliance with the terms of this Coverage Part.

- b. The premium for the Extended Reporting Period endorsement will be computed according to the following percentages based on the annual premium amount of this Coverage Part:

A one-year Extended Reporting Period for 30% of the expiring premium;

A two-year Extended Reporting Period for 75% of the expiring premium; or

A three-year Extended Reporting Period for 120% of the expiring premium.

- c. The Extended Reporting Period cannot be cancelled or renewed.
- d. The additional premium for the Extended Reporting Period is fully earned at the inception of the Extended Reporting Period.
- e. Coverage for a "claim" or circumstances which ultimately lead to a "claim" first received and reported during the Extended Reporting Period will be in excess over any other valid and collectible insurance providing coverage for that "claim".

- f. The Extended Reporting Period does not reinstate or increase the Limits of Insurance available under this Coverage Part.
- g. The Extended Reporting Period begins on the effective date of cancellation or non-renewal of the policy.

### **3. Automatic Extended Reporting Period**

The following applies if the Coverage Part is cancelled or non-renewed:

If a "wrongful act", "wrongful employment act" or "third party wrongful act" is committed by the insured prior to the effective date of cancellation or non-renewal, and a "claim" is made against the insured within 60 days of the cancellation or non-renewal date, the insured has 60 days from the cancellation or non-renewal date to give us written notification of the "claim". If you have obtained replacement coverage or any other valid insurance is in force, this Automatic Extended Reporting Period is not applicable.

This Condition does not apply to any cancellation resulting from non-payment of premium or non-compliance with the terms and conditions of this Coverage Part.

### **4. Action Against Us**

No action may be brought by an insured against us to recover for any "loss" allegedly covered by this Coverage Form, unless the insured:

- a. Has fully complied with all the terms of this Coverage Form; and
- b. Provides 60 days' notice to us of intent to bring the action so that we and the insured can jointly determine whether the dispute can be resolved through mediation.

No person or organization has a right under this Coverage Form to join us as a party or otherwise bring us into a suit asking for damages from an insured.

Nothing in this section constitutes or should be understood to constitute a waiver of our right to take action against the insured at any time following tender of the "claim" to us in any court of competent jurisdiction in the United States.

### **5. Order of Payments**

In the event payment of "loss" is due under this Coverage Part but the amount of the "loss" exceeds the remaining available Limit of Insurance specified in the Coverage Part Declarations, we will, to the extent of any remaining amount of the Limit of Insurance available:

- a. First pay for "loss" on behalf of the "individual insured" for which coverage is provided, then
- b. Pay for "loss" on behalf of the "organization" for which coverage is provided.

### **6. Transfer of Rights of Recovery Against Others to Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do everything necessary to secure our rights and must do nothing to impair them.

### **7. Other Insurance**

This insurance will be excess over any other valid and collectible insurance, unless the other insurance is specifically written to be in excess of this Coverage Part.

### **8. Terms of Coverage Part Conformed to Statute**

Terms of this Coverage Part which are in conflict with the statutes of the state in which this policy is issued, are hereby amended to conform to those statutes.

### **9. Transactions**

- a. If after the effective date of this Coverage Part:
  - (1) You merge into, or consolidate with, another entity and you are not the surviving entity; or

- (2) Another entity, person or group of entities and/or persons acting in concert acquires more than 50% of your assets; or
- (3) Another entity, person or group of entities and/or persons acting in concert acquires the right to elect or select a majority of your directors, trustees, or managers; or
- (4) You sell all or substantially all of your assets,

this Coverage Part will continue in effect until the expiration date of the policy, or the effective date of non-renewal, if applicable, with respect to "wrongful acts", "wrongful employment acts" or "third party wrongful acts" occurring before the transaction, but there is no coverage under this policy for actual or alleged "wrongful acts", "wrongful employment acts" or "third party wrongful acts" occurring on or after the transaction.

- b. You must give us written notice of the transaction as soon as practicable, but not later than 30 days after the effective date of the transaction.

The entire premium for this coverage is fully earned on the transaction date. In the event of a transaction, you will have the right to an offer of coverage from us for an Extended Reporting Period to report "wrongful acts", "wrongful employment acts" or "third party wrongful acts" occurring prior to the effective date of the transaction.

- c. If, during the policy period, you:
  - (1) Acquire voting securities in another entity or create another entity, which as a result of the acquisition or creation becomes a "subsidiary"; or

- (2) Acquire any entity by merger into or consolidation with the "organization";

then, subject to all terms and conditions of this policy, such "organization" and its "individual insureds" will be covered under this policy but only with respect to "claims" for "wrongful acts" or "wrongful employment acts", or "third party wrongful acts" taking place after such acquisition or creation, unless we agree to provide coverage by endorsement for "wrongful acts" or "wrongful employment acts", or "third party wrongful acts" taking place prior to such acquisition or creation.

If the total assets of the acquired "organization", as reflected in the then most recent consolidated financial statements of the "organization", exceed 25% of the "organization's" assets as reflected in your most recent consolidated financial statements, you, as a condition precedent to coverage with respect to such insureds, will, prior to such acquisition:

- (1) Give written notice of such acquisition or creation to us;
- (2) Pay any additional premium required by us; and
- (3) Agree to any additional terms and conditions of this policy as required by us.

## 10. Representations

- a. We have relied upon the Declarations and statements in the "application" for this policy in providing coverage under this policy to the insureds. The Declarations and statements are the basis of the coverage under this policy and will be incorporated into and will constitute part of this policy.
- b. The "application" for coverage under this policy will be considered to be a separate "application" for coverage by each "individual insured". With respect to the Declarations and statements in such "application", no knowledge possessed by an "individual insured" will be imputed to any other "insured individual".

c. If the "application" contains any misrepresentation or omission made with the actual intent to deceive or contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by us, then with respect to any "claim" based upon, attributable to, or rising out of any such misrepresentation or omission, no coverage shall be provided for any:

(1) "Individual insured" who knew the facts that were not truthfully disclosed in the "application" (whether or not such misrepresentation or omission in the "application" was known by an "individual insured") or any "organization" to the extent it indemnifies any such "individual insured"; and

(2) "Organization", but only if any of your past or present chief executive officers or chief financial officers (or any equivalent position to any of the foregoing) knew the facts that were not truthfully disclosed in the "application" (whether or not such misrepresentation or omission in the "application" was known by such individual).