



# ABA Employers Edge<sup>SM</sup>

## An Employment Practices Liability Insurance Policy for Law Firms

Endorsed by the American Bar Association

**Executive Risk Indemnity Inc.**

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AMERICAN BAR ASSOCIATION

**THIS IS A CLAIMS MADE POLICY  
WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.  
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

**EXECUTIVE RISK INDEMNITY INC.**

**ABA EMPLOYERS EDGE<sup>SM</sup>  
An Employment Practices Liability Insurance Policy for Law Firms  
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**Executive Risk Indemnity Inc. (the "Underwriter") and the Insureds, subject to all of the terms, conditions, and limitations of this Policy, agree as follows:**

**I. INSURING AGREEMENT**

The Underwriter will pay on behalf of the **Insureds Defense Expenses** and **Loss** in excess of the applicable retention set forth in ITEM 4 of the Declarations resulting from **Claims** first made against any **Insured** during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Employment Practices Wrongful Acts** occurring subsequent to the Retroactive Date stated in ITEM 5 of the Declarations and before the expiration of the **Policy Period**.

**II. DEFINITIONS**

- (A) "**Application**" means the application attached to and forming part of this Policy, including any materials submitted in connection with such application, all of which are on file with the Underwriter and are a part of this Policy, as if physically attached.
- (B) "**Claim**" means:
- (1) any written notice received by any **Insured** that any person or entity intends to hold an **Insured** responsible for an **Employment Practices Wrongful Act**;
  - (2) any judicial, administrative or other proceeding against any **Insured** for an **Employment Practices Wrongful Act**; or
  - (3) any written request to toll or waive a statute of limitations relating to a potential judicial, administrative or other proceeding against any **Insured** for an **Employment Practices Wrongful Act**;

provided, that **Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement, or any criminal proceeding against an **Insured**.

- (C) "**Defense Expenses**" means reasonable legal fees and expenses incurred in the investigation, defense or appeal of any **Claim**; provided, that **Defense Expenses** does not include remuneration, salaries, wages, fees, expenses, overhead or benefit expenses of any **Insured**.
- (D) "**Discrimination**" means any failure or refusal to hire any person, any failure or refusal to promote any person, any failure or refusal to offer any person a partnership or shareholder interest or to name any person as a partner or shareholder, the demotion or discharge of any person, employment-related defamation, wrongful failure to grant tenure, or any limitation, segregation or classification of **Employees** or applicants for employment in any way that would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect his or her status as an **Employee** because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status that is protected pursuant to any applicable federal, state or local statute or ordinance.
- (E) "**Employee**" means any individual whose labor or service is engaged by and directed by the **Firm**. This includes part-time, seasonal and temporary **Employees** as well as any individual employed in a supervisory or managerial position. **Employee** also includes any partner, principal, director, officer, or shareholder of the **Firm**. In addition, **Employee** includes any volunteer working for the **Firm**, but solely for conduct within the scope of his or her duties as a volunteer for the **Firm**; any independent contractor working solely for the **Firm**, but solely for conduct within the scope of his or her duties as an independent contractor for the **Firm**; and any leased employee working solely for the **Firm**, but solely for conduct within the scope of his or her duties as a leased employee for the **Firm**.
- (F) "**Employment Practices Wrongful Act**" means any actual or alleged: (1) **Wrongful Termination**; (2) **Discrimination**; (3) **Harassment**; (4) **Retaliation**; (5) **Third Party Discrimination**; (6) **Third Party Harassment**; or (7) **Workplace Tort**.
- (G) "**Firm**" means the organization(s) engaged in the practice of law under the name first set forth in ITEM 1 of the Declarations whether as a partnership, professional corporation or association or otherwise, and also will include its predecessors as set forth in ITEM 1 of the Declarations.

(H) "**Harassment**" means:

- (1) unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is made a condition of employment at the **Firm**, is used as a basis for employment decisions at the **Firm**, creates a work environment at the **Firm** that interferes with performance, or creates an intimidating, hostile, or offensive working environment; or
- (2) workplace harassment (i.e., harassment of a non-sexual nature) which creates a work environment at the **Firm** that interferes with performance or creates an intimidating, hostile, or offensive working environment.

(I) "**Insured**" means the **Firm** and each person who was, is or becomes:

- (1) a partner, a principal, a director, an officer, or a shareholder of the **Firm**;
- (2) a full-time or part-time salaried **Employee** of the **Firm** or of an incorporated partner of the **Firm**; or
- (3) "counsel" or "of counsel" to the **Firm**;

solely with respect to conduct or actions within the scope of their employment at the **Firm**.

(J) "**Loss**" means any damages (including back pay awards, front pay awards, compensatory damages and punitive damages if insurable under the law pursuant to which this policy is construed), pre-judgment interest, post-judgment interest, and settlements which an **Insured** is legally obligated to pay as a result of a **Claim**; provided, that **Loss** does not include:

- (1) civil or criminal fines, sanctions, liquidated damages, taxes or penalties, the multiplied portion of any multiplied damage award (except for multiplied damages awarded pursuant to the Age Discrimination in Employment Act), or matters which are uninsurable under the law pursuant to which this Policy is construed;
- (2) any costs associated with the modification of any building or property in order to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of the Americans With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common law;

- (3) any other non-monetary relief awarded against any **Insured**, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature;
  - (4) severance pay or damages determined to be owing under an express written contract of employment or an express written obligation to make payments in the event of the termination of employment;
  - (5) payment of insurance plan benefits; and
  - (6) amounts awarded pursuant to a labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.
- (K) "**Policy Period**" means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations or to any earlier cancelation date.
- (L) "**Potential Claim**" means any person or entity alleging an **Employment Practices Wrongful Act** by an **Insured**. "Alleging" as used in this paragraph means lodging a complaint or charge that does not constitute a **Claim**, but which may subsequently give rise to a **Claim**, with a **Supervisory Employee**, the **Firm's** human resources department, or the **Firm's** department that provides a similar function to a human resources department.
- (M) "**Related Claims**" means all **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions, events, or **Employment Practices Wrongful Acts** or the same or related series of facts, circumstances, situations, transactions, events, or **Employment Practices Wrongful Acts**.
- (N) "**Retaliation**" means retaliatory treatment against an **Employee** of the **Firm** on account of such **Employee's** exercise or attempted exercise of his or her rights under law.
- (O) "**Supervisory Employee**" means a partner, a principal, a director, an officer, or a shareholder of the **Firm** or the personnel director or any other **Employee** of the **Firm** having management-level responsibility for personnel matters.
- (P) "**Third Party Discrimination**" means any disparate treatment or classification of clients or other individuals based on race, color, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference, or other status that is protected pursuant to any applicable federal, state or local statute or ordinance.

- (Q) **"Third Party Harassment"** means:
- (1) unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is made by an **Employee** to a client or other individual; or
  - (2) any other harassment of a client or other individual, by an **Employee**, that creates an intimidating, hostile, or offensive environment.
- (R) **"Workplace Tort"** means employment-related misrepresentation, negligent evaluation, wrongful discipline, or wrongful deprivation of career opportunity.
- (S) **"Wrongful Termination"** means the actual or constructive termination of the employment of, or demotion of, failure or refusal to promote, failure or refusal to offer a partnership or shareholder interest to, or to name as a partner or shareholder, any **Employee** at the **Firm**, which is in violation of law or is against public policy, or is in breach of an implied agreement to continue employment or, subject to EXCLUSION (B)(4), is in breach of an express written agreement to continue employment.

### III. EXCLUSIONS

- (A) The Underwriter will not pay **Defense Expenses** or **Loss** for any **Claim**:
- (1) arising out of any actual or alleged violation of the Employee Retirement Income Security Act of 1974 and any amendments thereto or any similar provisions of any federal, state or local statutes, ordinances, regulations, or common law;
  - (2) arising out of any actual or alleged bodily injury to, or sickness, loss of consortium, disease or death of, any person, or damage to or destruction of property, including the loss of use thereof; provided, that this EXCLUSION (A)(2) does not apply to **Claims** for emotional distress, mental anguish or humiliation actually or allegedly resulting from an **Employment Practices Wrongful Act**;
  - (3) arising out of:
    - (a) any fact, circumstance, situation, transaction or event of **Employment Practices Wrongful Acts** about which any **Supervisory Employee** had knowledge prior to the inception date of the first Employment Practices Liability Insurance Policy issued to the **Firm** by the Underwriter and continuously renewed by the Underwriter; or

- (b) any **Claim** or fact, circumstance, situation, transaction, or event, of **Employment Practices Wrongful Acts** which, before the Inception Date of this Policy as set forth in ITEM 2 of the Declarations, was the subject of any notice given under any other insurance policy, including but not limited to any policy of which this Policy is a renewal or replacement, or which was identified in any summary or statement of claims or circumstances which could give rise to a claim submitted in connection with the **Application** or an application for any policy of which this Policy is a renewal or replacement;

provided, however, that if EXCLUSION (A)(3)(a) is applicable because of any **Employment Practices Wrongful Acts** committed by a **Supervisory Employee**, and if no other **Supervisory Employee** had knowledge thereof prior to the inception date of the first Employment Practices Liability Insurance Policy issued to the **Firm** and continuously renewed by the Underwriter, EXCLUSION (A)(3)(a) shall apply only to the **Supervisory Employee** who committed such **Employment Practices Wrongful Acts** and shall not bar coverage for any other **Insured**;

- (4) resulting in **Loss** that an **Insured** is obligated to pay by reason of the assumption of another person's liability for an **Employment Practices Wrongful Act** in a contract or an agreement; provided, that this EXCLUSION (A)(4) will not apply to **Loss** resulting from an **Employment Practices Wrongful Act** that would have been sustained even in the absence of such contract or agreement;
- (5) arising out of a lockout, strike, picket line, hiring of replacement workers or other similar actions in connection with labor disputes or labor negotiations;
- (6) by or on behalf of, in the name or right of or for the benefit of any partner, principal, director, officer, or shareholder of the **Firm** arising out of a partnership agreement, allocation of shares, ownership interests in the **Firm**, distribution of profits or capital, or any other similar financial relationship among **Insureds**; and
- (7) by any person or entity arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Insured** under this Policy in connection with the rendering of, or actual or alleged failure to render, services to others as an attorney or a notary public or as an administrator, conservator, executor, guardian or committee or in any similar fiduciary capacity incidental to the practice of law.

(B) Subject to all of its other applicable terms, conditions, limitations and endorsements, this Policy will provide coverage for **Defense Expenses** only (but not for **Loss**) for **Claims**:

- (1) arising out of any actual or alleged violation of the Workers' Adjustment and Retraining Notification Act and any amendments thereto, or any similar provisions of any federal, state or local statutes, ordinances, regulations, or common law;
- (2) seeking only injunctive or non-monetary relief, regardless of whether a prevailing claimant may be entitled to recover attorneys' fees and costs;
- (3) arising out of any actual or alleged violation of any workers' compensation law, any unemployment compensation law, any social security law, the Consolidated Omnibus Budget Reconciliation Act of 1985 and any amendments thereto, any disability benefits law, or any similar provisions of any federal, state or local statutes, ordinances, regulations, or common law; and
- (4) for actual or constructive termination of the employment of, or demotion of, or failure or refusal to promote any **Employee** at the **Firm** which is in breach of an express written employment agreement.

#### IV. EXTENSIONS OF COVERAGE

##### (A) Extended Reporting Period:

- (1) In the event that the Underwriter fails or refuses to renew this Policy, or in the event the **Firm** cancels or declines to renew this Policy, the **Firm** may purchase for an additional premium an Extended Reporting Period for a period of either:
  - (a) one (1) year following the expiration of the **Policy Period** or termination, for a premium equal to seventy-five percent (75%) of the then current annual premium for this Policy; or
  - (b) two (2) years following the expiration of the **Policy Period** or termination, for a premium equal to one hundred fifty percent (150%) of the then current annual premium for this Policy.

The coverage otherwise afforded under this Policy will be extended to apply for the Extended Reporting Period, subject to all of this Policy's terms, conditions, limitations and endorsements, to **Defense Expenses** and **Loss** from **Claims** first made against any **Insured** during the Extended Reporting Period for **Employment Practices Wrongful Acts**

occurring subsequent to the Retroactive Date set forth in ITEM 5 of the Declarations and before the expiration of the **Policy Period** or termination. The **Firm** must notify the Underwriter in writing by certified mail at the address set forth in the Declarations of its decision to purchase such an Extended Reporting Period and must pay the applicable additional premium for the length of the Extended Reporting Period selected by the **Firm** within thirty (30) days after the expiration of the **Policy Period** or termination. Payment of the full additional premium by the due date is a strict condition precedent to the right to purchase an Extended Reporting Period. The **Firm** may not change its election regarding the length of the Extended Reporting Period purchased once that election has been made by tendering the applicable premium.

- (2) The maximum aggregate Limit of Liability set forth in ITEM 3(b) of the Declarations shall be the maximum aggregate Limit of Liability for the **Policy Period** and, if applicable, the Extended Reporting Period. The Policy's maximum aggregate Limit of Liability is not increased, reinstated or renewed by virtue of the applicability of any Extended Reporting Period.

(B) **Changes in Risk:**

- (1) If, during the Policy Period, the total number of **Employees** in the **Firm** increases by more than twenty percent (20%) or twenty-five (25), whichever is less, as the result of the **Firm's** merger with or acquisition of any other law firm or any group of employees who practiced together at another law firm, the **Firm** must promptly give the Underwriter written notice thereof, together with such information as the Underwriter may require, and the Underwriter will be entitled to impose such additional coverage terms and charge such additional premium in connection therewith as the Underwriter, in its sole discretion, may require.
- (2) In the event of the death, incapacity or bankruptcy of an **Insured**, a **Claim** against the estate, heirs, legal representatives, or assigns of such **Insured** will be deemed to be a **Claim** against such **Insured**.
- (3) Bankruptcy or insolvency of an **Insured** or an **Insured's** estate will not relieve the Underwriter of any of its obligations hereunder.

**V. CONDITIONS**

(A) **Territory:**

This Policy applies to any **Employment Practices Wrongful Act** occurring and any **Claim** made anywhere in the world.

(B) **Reporting of Claims and Potential Claims:**

(1) If a **Claim** is made against any **Insured**, the **Insured** or the **Firm** shall give written notice thereof to the Underwriter as soon as practicable and in no event later than sixty (60) days after such **Claim** is first made as determined pursuant to CONDITION (C)(1) and shall immediately forward to the Underwriter every demand, notice, summons, complaint or other process received by any **Insured** or his/her/its representatives. Compliance with this notice requirement is a strict condition precedent to coverage under this Policy.

(2) If during the **Policy Period**, an **Insured** becomes aware of a **Potential Claim** and the **Insured** during the **Policy Period**:

(a) gives the Underwriter written notice of such **Potential Claim**, including a description of the **Potential Claim** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Potential Claim**, the damages which may result from such **Potential Claim**, and the circumstances by which the **Insured** first became aware of such **Potential Claim**; and

(b) requests coverage under this Policy for any **Claim** subsequently resulting from such **Potential Claim**;

then the Underwriter will treat any such subsequently resulting **Claim** as if it had been made against the **Insured** during the **Policy Period**. Notice of any such subsequently resulting **Claim** must be given in accordance with CONDITION (B)(1).

(3) All notices of **Claims** required under CONDITION (B)(1) and all notices of **Potential Claims** permitted under CONDITION (B)(2) must be sent by certified mail to the address set forth in the Declarations.

(C) **Timing and Interrelationship of Claims:**

- (1) A **Claim** as defined in DEFINITIONS (B)(1) and (B)(3) is first made when the **Firm's** management committee (or similar committee or board), any partner, principal, director, officer or shareholder of the **Firm**, the **Firm's** human resources director, the **Firm's** administrator, or anyone designated by the **Firm** to receive employment related complaints receives a written notice or request as set forth therein; and a **Claim** as defined in DEFINITION (B)(2) is first made when the **Firm's** management committee (or similar committee or board), any partner, principal, director, officer or shareholder of the **Firm**, the **Firm's** human resources director, the **Firm's** administrator, or anyone designated by the **Firm** to receive employment related complaints first becomes aware, through service of process or otherwise, of the filing of a complaint, motion for judgment or similar document or pleading commencing a judicial, administrative or other proceeding against an **Insured**.
- (2) All **Related Claims** will be treated as a single **Claim** made at the time the first of such **Related Claims** was made in accordance with CONDITION (C)(1), or when the first of such **Related Claims** is treated as having been made in accordance with CONDITION (B)(2), whichever is earlier.

(D) **Defense and Settlement of Claims:**

- (1) The **Insureds** will have the right and duty to retain qualified counsel of their choosing to represent them in the defense or appeal of **Claims**, but no **Defense Expenses** may be incurred without the Underwriter's consent, such consent not to be unreasonably withheld. It shall not be unreasonable, if more than one **Insured** is involved in a **Claim**, for the Underwriter to withhold its consent to separate counsel for one or more of such **Insureds** unless there is a material actual or potential conflict of interest among such **Insureds**.
- (2) The Underwriter will, upon written request, pay **Defense Expenses** owed under this Policy on a current basis. As a condition of any payment of **Defense Expenses** before the final disposition of a **Claim**, the Underwriter may require a written undertaking on terms and conditions satisfactory to it guaranteeing the repayment of any **Defense Expenses** paid on behalf of any **Insured** if it is finally determined that this Policy would not cover **Loss** incurred by such **Insured** in connection with such **Claim**. Except for **Defense Expenses** paid in accordance with this CONDITION (D)(2), the Underwriter will have no obligation to pay any **Loss** before the final disposition of a **Claim**.

- (3) No **Insured** may admit any liability for any **Claim** or settle any **Claim** without the Underwriter's consent; provided, however, that the **Insureds** may settle any **Claim** without the Underwriter's consent where **Defense Expenses** and the settlement amount in respect of such **Claim**, in the aggregate, do not exceed fifty percent (50%) of the applicable retention. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, then the Underwriter's liability for such **Claim** will not exceed (i) the amount for which the **Claim** could have been settled plus any **Defense Expenses** incurred with the Underwriter's consent up to the date the **Insureds** refuse to settle such **Claim**, plus (ii) fifty percent (50%) of any amounts (including **Loss** and **Defense Expenses**) in excess of the amount set forth in clause (i) above, incurred in connection with such **Claim**; subject, in all events, to the applicable retention and the maximum aggregate Limit of Liability. The remaining fifty percent (50%) of all amounts in excess of the amount for which the **Claim** could have been settled will be carried by the **Insureds** at their own risk and will be uninsured.
- (4) The Underwriter may, in its sole discretion and without any obligation to do so, undertake investigations and conduct negotiations with respect to any **Potential Claim** and, with the consent of the **Insureds**, enter into such settlement of any **Potential Claim** as the Underwriter deems appropriate. Any such settlement of a **Potential Claim** shall be treated as the settlement of a **Claim** made during the **Policy Period** in which the **Potential Claim** was reported to the Underwriter. If the **Insureds** refuse to consent to a settlement acceptable to the potential claimant in accordance with the Underwriter's recommendation, then the Underwriter's liability for any **Claim** resulting from such **Potential Claim** will not exceed (i) the amount for which the **Potential Claim** could have been settled, plus (ii) fifty percent (50%) of any amounts (including **Loss** and **Defense Expenses**) in excess of the amount set forth in clause (i) above, subject, in all events, to the applicable retention and the maximum aggregate Limit of Liability. The remaining fifty percent (50%) of all amounts in excess of the amount for which the **Potential Claim** could have been settled will be carried by the **Insureds** at their own risk and will be uninsured.

(E) **Limits of Liability; Retention:**

- (1) The amount stated in ITEM 3(a) of the Declarations will be the maximum Limit of Liability of the Underwriter under this Policy for all **Defense Expenses** and **Loss** from any **Claim** or **Related Claims** for which this Policy provides coverage, regardless of the number of **Related Claims**, the number of persons or entities included within the definition of "**Insured**," the number of claimants who make **Claims** against the **Insureds**, or the number of **Insureds** named as defendants in any **Claim**.
- (2) The amount stated in ITEM 3(b) of the Declarations will be the maximum Limit of Liability of the Underwriter under this Policy for all **Defense Expenses** and **Loss** from all **Claims** for which this Policy provides coverage, regardless of the number of **Claims**, the number of persons or entities included within the definition of "**Insured**," the number of claimants who make **Claims** against the **Insureds**, or the number of **Insureds** named as defendants in any **Claim**.
- (3) **Defense Expenses** will be part of and not in addition to such Limit of Liability, and payment of **Defense Expenses** by the Underwriter will reduce, and may exhaust, the Limit of Liability.
- (4) The obligation of the Underwriter to pay **Defense Expenses** and **Loss** in connection with any **Claim** will only be in excess of the retention. The **Insureds** must bear the amount of the retention. The Underwriter will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of the retention amount on behalf of any **Insured**. The Underwriter will, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** must repay the Underwriter any such amounts promptly upon demand.

(F) **Cancellation:**

- (1) The Underwriter may not cancel this Policy except for failure to pay a premium when due, in which case twenty (20) days' written notice will be given.
- (2) The **Firm** may cancel this Policy by surrendering this Policy or by mailing or delivering to the Underwriter written notice stating when thereafter such cancellation will be effective. If this Policy is canceled by the **Firm**, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective.

- (3) The Underwriter will not be required to renew this Policy upon its expiration. If the Underwriter elects not to renew this Policy, the Underwriter will deliver or mail to the **Firm** written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations.

(G) **Exhaustion:**

If the Limit of Liability is exhausted by the payment of **Defense Expenses** and/or **Loss**, all obligations of the Underwriter under this Policy will be completely fulfilled and exhausted, and the Underwriter will have no further obligations of any kind or nature whatsoever under this Policy, and the premium will be fully earned.

(H) **Cooperation and Subrogation:**

- (1) In the event of a **Claim**, or after giving the Underwriter notice of a **Potential Claim**, the **Insureds** must provide the Underwriter with all information, assistance and cooperation as the Underwriter may reasonably request.
- (2) The **Insureds** may do nothing to prejudice the Underwriter's position or the Underwriter's potential or actual rights of recovery in the event of a **Claim**.
- (3) In the event of payment under this Policy, the Underwriter will be subrogated to, and entitled to an assignment of, all of the rights of recovery therefor of the **Insureds**. The **Insureds** shall execute all papers and do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the Underwriter effectively to pursue and enforce such rights and to bring suit in the name of the **Insureds**.
- (4) The obligations of the **Insureds** under this CONDITION (H) will survive the Policy.

(I) **Representations:**

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy and are material to the Underwriter's acceptance of this risk. This Policy shall not, however, be avoided as to any **Insured** on account of the untruth of the particulars and statements contained in the **Application** unless:

- (1) such **Insured** knew of the untruth of such particular or statement, in which event such knowledge shall be imputed only to such **Insured**; or
- (2) the person providing such particular or making such statement in the **Application** knew of its untruth, in which event such knowledge shall be imputed to all **Insureds**.

(J) **No Action against the Underwriter:**

- (1) No action may be taken against the Underwriter unless, as a condition precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the obligation of the **Insureds** to pay has been finally determined either by judgment against the **Insureds** after adjudicatory proceedings or by written agreement of the **Insureds**, the claimant and the Underwriter.
- (2) No person or entity will have any right under this Policy to join the Underwriter as a party to any **Claim** against any **Insured** to determine the liability of such **Insured**; nor may the Underwriter be impleaded by any **Insured** or any **Insured's** legal representative in any such **Claim**.

(K) **Arbitration of Coverage Disputes:**

Notwithstanding CONDITION (J), any coverage dispute or other controversy regarding the rights or obligations of the Underwriter and the **Insureds** under this Policy shall be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The Underwriter or the **Insureds** may invoke this arbitration procedure by giving written notice to that effect by certified mail to the other party. The Underwriter and the **Insureds** will attempt to agree upon a single arbitrator. If agreement regarding selection of a single arbitrator is not reached within thirty (30) days after the initial demand for arbitration, each party shall, within thirty (30) days thereafter, name an arbitrator. Those two arbitrators shall, within thirty (30) days after they both have been named, select a third arbitrator, who shall serve as the Chair of the arbitration panel. If the two party-selected arbitrators are unable to

agree upon a third arbitrator, then the AAA shall appoint a person who is neutral to the parties to act as the Chair of the arbitration panel. None of the arbitrators may be former or current partners, principals, directors, officers, shareholders or employees of the Underwriter or of any **Insured**.

The Underwriter and the **Insureds** each shall file a written submission with supporting documents to the single arbitrator or, if applicable, to the arbitration panel (hereinafter, references to "arbitration panel" shall include a single arbitrator agreed upon by the parties) within ninety (90) days after appointment of the last member of the arbitration panel, which period may be extended by the arbitration panel. The arbitration hearing shall be held in the city where the **Firm** has its principal office, at a site and at a time designated by the arbitration panel, at which time the arbitration panel will receive oral evidence. The parties shall have at their disposal the same pre-trial discovery rights available under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District in which the arbitration hearing will be held; provided, that the arbitration panel may shorten the time permitted by those Rules for any discovery procedure in light of the ninety (90) day timetable for the parties' submissions specified above, and provided further that any dispute regarding discovery shall be submitted for decision to the arbitration panel. The arbitration panel shall be relieved of judicial formality and need not adhere to formal rules of evidence. The majority of the arbitration panel will issue a written decision resolving the controversy within thirty (30) days after the close of the hearing, which decision will state the facts reviewed, conclusions reached and reasons for the conclusions. The decision will be binding upon the Underwriter and the **Insureds** in any court of competent jurisdiction and will not be subject to appeal. The arbitration panel also shall allocate the fees and expenses of the arbitration panel between the Underwriter and the **Insureds**. Any finding of liability by the arbitration panel against the Underwriter shall not exceed the Policy's applicable remaining Limit of Liability after deduction of all **Defense Expenses** and **Loss** that the Underwriter has paid or is obligated to pay, plus the fees and expenses of the arbitration panel to the extent allocated solely to the Underwriter by the arbitration panel.

(L) **Authorization and Notices:**

- (1) The person or entity first named in ITEM 1 of the Declarations will act on behalf of the **Insureds** with respect to all matters under this Policy, including but not limited to giving and receiving notices and other communications, effecting or accepting any endorsements to or cancelation of this Policy, the payment of premium and the receipt of any return premiums, and the purchase of any Extended Reporting Period.

(2) Unless otherwise specified, all notices permitted or required by this Policy shall be given in writing and shall be sent by first class or certified mail to the respective addresses of the person or entity first named in ITEM 1 of the Declarations, if to the **Insureds**, or of the Underwriter, if to the Underwriter, as set forth in the Declarations.

(M) **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Underwriter will not effect a waiver or change in any part of this Policy or estop the Underwriter from asserting any right under its terms, conditions and limitations.

(N) **No Transfer or Assignment of Insured Interest:**

No transfer or assignment of interest under this Policy or of any cause of action against the Underwriter arising out of its performance of, or alleged failure to perform in accordance with, the terms and conditions of this Policy will be effective without the Underwriter's written consent.

(O) **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms, conditions and limitations of the Policy.

(P) **Entire Agreement:**

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement existing between the **Insureds** and the Underwriter or any of its agents relating to this insurance and that the terms, conditions, limitations and endorsements of this Policy may not be waived or changed except by written endorsement issued to form a part of this Policy.

(Q) **Underwriter's Signature:**

**In witness whereof the Underwriter has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Underwriter.**

*Henry A. Aubick*  
Secretary

  
President