



*ExecPro*sm
Employment Practices Liability

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Employment Practices Liability Insurance Policy
Great American Insurance Company - Executive Liability Division
Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

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THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and any attachments thereto, and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreement

The **Insurer** shall:

- A. assume the Duty to Defend any **Claim** covered by this Policy and made against the **Insureds** during the **Policy Period** or the **Discovery Period** for an **Employment Practices Wrongful Act** by an **Insured** or any person for whom the **Insured** is legally responsible even if the allegations are groundless, false or fraudulent; and
- B. pay on behalf of the **Insureds** all **Loss** which the **Insureds** shall be legally obligated to pay as a result of a **Claim** described in I.A. above.

Section II. Discovery Period

- A. In the event the **Insurer** refuses to renew this Policy or the **Corporation** chooses to cancel or not renew this Policy, the **Corporation** shall have the right, upon payment of fifty percent (50%) of the annual premium, (or if the **Policy Period** is other than annual, fifty percent (50%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period**, but only with respect to any **Employment Practices Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to as the **Discovery Period**.
- B. As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the **Discovery Period** must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C. The purchase of the **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Discovery Period** is part of, and not in addition to, the **Policy Period**.

Section III. Definitions

- A. "Claim" shall mean:
 - (1) a written demand for monetary or non-monetary relief made against any **Insured** and reported to the **Insurer** pursuant to Section VIII.A.(1); or
 - (2) a civil, criminal, administrative or arbitration proceeding seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or filing of notice of charges or similar document, including any proceeding initiated against any **Insured** before the Equal Employment Opportunity Commission (EEOC) or any similar governmental body.

In no event shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

- B.** "Claimant" shall mean all **Employees** and prospective **Employees** of the **Company**, any natural person independent contractor treated as an employee of the **Company** under applicable law, or any governmental agency acting on behalf of an **Employee** or prospective **Employee**.
- C.** "Company" shall mean the **Corporation** and any **Subsidiary**.
- D.** "Corporation" shall mean the entity named in Item 1 of the Declarations.
- E.** "Costs of Defense" shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim** including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish such bonds). **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses accruing to any **Employee** of the **Company**.
- F.** "Employee" shall mean any individual whose labor or service is engaged and directed by the **Company** in the ordinary course of the **Company's** business including past, present, future, part-time, seasonal, temporary or leased employees. However, **Employee** shall not mean independent contractors unless specifically included by written endorsement to this policy.
- G.** "Employment Practices Wrongful Act" shall mean any of the following acts but only if alleged by or on behalf of a **Claimant**:
- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive, or breach of an implied employment contract;
 - (2) employment related misrepresentation;
 - (3) workplace harassment of any kind including sexual harassment;
 - (4) discrimination;
 - (5) wrongful failure to employ or promote;
 - (6) wrongful discipline;
 - (7) wrongful demotion or deprivation of career opportunity, including defamatory statements made in connection with an employee reference;
 - (8) failure to grant tenure;
 - (9) negligent evaluation;
 - (10) failure to provide and enforce adequate workplace or employment policies and procedures;
 - (11) wrongful retaliation; or
 - (12) employment related libel, slander, defamation, or invasion of privacy.
- H.** "Insured(s)" shall mean the **Company** and all **Insured Persons**.
- I.** "Insured Persons" shall mean:
- (1) all persons who were, now are, or shall be directors, officers, management committee members, members of the Board of Managers or natural person General Partners of the **Company**; and
 - (2) **Employee(s)** of the **Company**.

- J. "Loss" shall mean judgments, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, settlements and **Costs of Defense**. **Loss** shall not include criminal or civil fines or penalties imposed by law, taxes, or any matter deemed uninsurable under the law pursuant to which this Policy shall be construed. The enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.
- K. "Policy Period" shall mean the period from the inception date of this Policy to the expiration date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.
- L. "Related Employment Practices Wrongful Acts" shall mean **Employment Practices Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- M. "Subsidiary" shall mean any entity in which the **Corporation** owns, directly or indirectly, more than fifty percent (50%) of the voting stock:
- (1) on or before the inception date of this Policy;
 - (2) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** after such date, if the employees of the created or acquired entity do not exceed twenty-five percent (25%) of the total employees of the **Company** as of the inception date of this Policy; or
 - (3) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** other than as described in (2) above, if the **Corporation**, within ninety (90) days, provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**.

Section IV. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. brought about or contributed to by:
- (1) any **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; or
 - (2) the deliberately fraudulent or criminal acts of any **Insureds**;
- this exclusion shall only apply if it is finally adjudicated that such conduct in fact occurred. For purposes of determining the applicability of this exclusion, the **Employment Practices Wrongful Act** of any **Insured** shall not be imputed to any other **Insured**;
- B. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Employment Practices Wrongful Act** or **Related Employment Practices Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given or **Claim** reported under any other policy of which this Policy in whole or in part is a direct or indirect renewal or replacement;
- C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative, arbitration or investigative proceeding involving any **Insured**, including any proceeding by or before the EEOC or any similar state, local or foreign agency, as of the date stated in Item 7 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

- D.** for any actual or alleged:
- (1) bodily injury, sickness, disease, or death of any person with the exception of mental anguish or emotional distress; or
 - (2) damage to or destruction of any tangible property, including the loss of use thereof;
- E.** for any **Employment Practices Wrongful Act** of any **Insured Persons** in their capacity as a director, officer, trustee or governor of any entity other than the **Company**, even if directed or requested to serve as a director, officer, trustee or governor of such entity;
- F.** for any **Employment Practices Wrongful Act** of any **Subsidiary** or an **Insured Person** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** occurring:
- (1) prior to the date such entity became a **Subsidiary** or was merged with the **Company**;
 - (2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with any **Employment Practices Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Employment Practices Wrongful Acts**; or
 - (3) subsequent to the date the **Corporation** ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such **Subsidiary**;
- G.** which is insured in whole or in part by another valid policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise;
- H.** for any actual or alleged violation by an **Insured** of the Employee Retirement Income Security Act of 1974 (except Section 510), the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law except a **Claim** alleging retaliation for the exercise of any rights under such laws;
- I.** other than **Costs of Defense**:
- (1) for any obligation of the **Company** as a result of a **Claim** seeking relief or redress in any form other than money damages, including but not limited to any obligation of the **Company** to modify any building or property; or
 - (2) for any obligation of the **Company** to pay:
 - (a) salary, wages or other employment-related benefits to any **Employee** under an express contract unless such obligation would exist absent the contract; or
 - (b) compensation earned by an **Employee** in the course of employment but not paid by the **Company** including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days. This exclusion shall not apply to front pay and back pay.

Section V. Limit of Liability

- A.** The **Insurer's** liability for all **Loss** shall be the amount shown in Item 3 of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period**, regardless of the time of payment or the number of **Claims**.

- B. The **Insurer** shall be liable to pay all **Loss** in excess of the applicable Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- C. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations, and such **Costs of Defense** shall serve to reduce the Limit of Liability.

Section VI. Retention

- A. One Retention shall apply to each and every **Claim**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention.
- B. More than one **Claim** involving the same **Employment Practices Wrongful Act** or **Related Employment Practices Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates:
 - (1) the earliest date on which any such **Claim** was first made; or
 - (2) the earliest date on which any such **Employment Practices Wrongful Act** or **Related Employment Practices Wrongful Act** was reported under this Policy or any other policy providing similar coverage.

Section VII. Defense and Settlement

- A. The **Insureds** shall at all times have the right to associate with the **Insurer** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply.
- B. The **Insurer** has the right to settle any **Claim**. In the event the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention which the **Insurer** would have contributed to the settlement had the **Insured** consented to settlement, the **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered **Loss**, including **Costs of Defense**, incurred subsequent to such refusal and subject to the Limit of Liability.
- C. The **Insureds** have the right to assume the defense of any **Claim** against them. The **Corporation** shall exercise this option in writing on behalf of all **Insureds** within thirty (30) days of the reporting of the **Claim** to the **Insurer**. If this option is exercised, the **Insurer** shall not re-assume the defense of the **Claim**. The **Insurer** shall at all times have the right to associate with the **Insured** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply.
- D. The **Insureds** shall not retain counsel, incur **Costs of Defense**, admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any **Costs of Defense** incurred, admission of liability, or any offer or agreement to settle prior to the **Insurer's** consent shall not be covered.
- E. In the event the **Insured** assumes the defense of any **Claim**, the **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:
 - (1) the appropriate Retention has been satisfied;
 - (2) any amounts advanced by the **Insurer** shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid;

- (3) the **Insureds** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds**; and
- (4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Loss**, the **Insureds** will repay the **Insurer** upon demand all **Costs of Defense** advanced.

Section VIII. Notice of Claim

- A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim**:
- (1) consisting of a written demand as defined in Section III.A.(1) which is made during the **Policy Period**. Such notice shall be given prior to the end of the **Policy Period**; or
 - (2) consisting of a proceeding as defined in Section III.A.(2) which is made during the **Policy Period**. Such notice shall be given as soon as practicable, but in no event later than ninety (90) days after the end of the **Policy Period**.

The **Insureds** failure to report a **Claim** pursuant to (1) above shall not negate the right to report a **Claim** based upon the same facts, matters or circumstances pursuant to (2) above under this Policy or any renewal thereof.

- B. If, during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Employment Practices Wrongful Act** and gives notice to the **Insurer** of:
- (1) the specific **Employment Practices Wrongful Act**;
 - (2) the injury or damage which has or may result therefrom; and
 - (3) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such **Employment Practices Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

- C. In addition to furnishing notice as provided in Sections VIII.A. or B. the **Insureds** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.
- D. Notice to the **Insurer** as provided in Sections VIII. A. or B. shall be given in writing to:

GREAT AMERICAN INSURANCE COMPANIES
EXECUTIVE LIABILITY DIVISION
CLAIMS DEPARTMENT
P.O. BOX 66943
CHICAGO, IL 60666.

Section IX. General Conditions

A. Cancellation or Non-Renewal

- (1) This Policy may be canceled by the **Corporation** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium.
- (2) This Policy may only be canceled by the **Insurer** if the **Corporation** does not pay the premium when due.

- (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** with no less than sixty (60) days advance notice thereof.

B. Proposal Forms

The particulars and statements contained in the Proposal Forms and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the the **Insureds** that the statements in the Proposal Forms or in any information provided therewith are their representations, they are material, and this Policy is issued in reliance upon the truth of such representations; provided, however, that except for material facts or circumstances known to the person(s) who signed the Proposal Forms, any misstatement or omission in such Proposal Forms or information provided therewith in respect of a specific **Employment Practices Wrongful Act** by a particular **Insured Person** or their cognizance of any matter which they have reason to suppose might afford grounds for a future **Claim** against them shall not be imputed to any other **Insured** for purposes of determining the validity of this Policy as to such other **Insured**.

C. Action Against the Insurer

- (1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay has been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured, Claimant** and the **Insurer**.
- (2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insureds** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such action.

D. Merger or Acquisition

If, during the **Policy Period**, the **Company** acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed twenty-five percent (25%) of the assets of the **Company** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.

E. Conversion to Run-Off Coverage

If, during the **Policy Period**, another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation**, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity, then:

- (1) the **Corporation** must give written notice of such transaction to the **Insurer** within ninety (90) days after the effective date of such transaction and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary;
- (2) this Policy shall only apply to **Employment Practices Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction and shall be excess of any other insurance available; and
- (3) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

F. Coverage Extensions

(1) Spousal Provision

The coverage provided by this Policy shall also apply to the lawful spouse of an **Insured Person**, but only for **Claims** arising out of any actual or alleged **Employment Practices Wrongful Acts** of an **Insured Person**.

(2) Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Employment Practices Wrongful Acts** of any **Insured Person**.

(3) Worldwide Provision

The coverage provided under this Policy shall apply worldwide.

G. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery. The **Insureds** shall execute all papers required and shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**.

H. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

I. Conformity to Statute

Any terms of this Policy in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

J. Entire Agreement

This Policy (including the Declarations, Proposal Forms submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

K. Corporation Represents Insureds

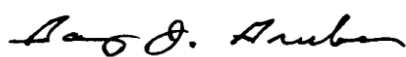
By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

L. Representative of the Insurer


Great American Insurance Companies, Executive Liability Division, P.O. Box 66943, Chicago, Illinois 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, except notice of **Claims** shall be given pursuant to Section VIII. of the Policy.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

GREAT AMERICAN INSURANCE COMPANIES®



President



Secretary